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# THE OKLAHOMA BAR Journal

Volume 95 — No. 4 — April 2024



**Indian  
Law**



The Oklahoma Bar Journal

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## CONFERENCE SCHEDULE

### FEATURED SPEAKERS:

*Kirk Caraway, Former President,  
Memphis Bar Association*

*Ingunn Markúsdóttir, Legal Expert,  
Icelandic Data Protection Authority*

### ARRIVAL - SATURDAY, SEPT. 14

Transportation from airport  
to hotel provided

### SATURDAY, SEPT. 14, 7 P.M.

Informal meet and greet at  
the Miðgarðu

### SUNDAY, SEPT. 15, 9 A.M.

Depart the hotel for a day tour  
of the Golden Circle

### MONDAY, SEPT. 16, 8-10 A.M.

Jury Selection:  
Create a "Partial" Jury

### MONDAY, SEPT. 16, 10:15-11:15 A.M.

Unique Legal Protections of  
Iceland's Natural Beauty

### MONDAY, SEPT. 16, 11:30-12:30 P.M.

Avoiding Ethical Traps in Market-  
ing, Client Funds and Conflicts

### TUESDAY, SEPT. 17, 1 P.M.

Depart for the Blue Lagoon

### WEDNESDAY, SEPT. 18, 8-9 A.M.

Using Data Theft for Targeted  
Political Ads

### WEDNESDAY, SEPT. 18, 9:15-10:15 A.M.

Ethics and Maximizing Settlement  
Recoveries

### WEDNESDAY, SEPT. 18, 10:15-11:15 A.M.

Workplace Ethics and  
Diversity at Law Firms

### WEDNESDAY, SEPT. 18, 11:30-12:30 P.M.

Embracing Wellness in Your  
Legal Practice

### THURSDAY, SEPT. 19, TIME TBA

Whale Watching Tour

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# THE OKLAHOMA BAR Journal

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Editor: Sheila Southard

*On the Cover: "Fire" by Brent Learned from the Oklahoma Judicial Center Collection*

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# Law Day

By Miles Pringle

**M**AY 1 IS LAW DAY, and the theme established by the American Bar Association is “Voices of Democracy.” According to the ABA, “Law Day provides an opportunity to understand how law and the legal process protect our liberty, strive to achieve justice, and contribute to the freedoms that all Americans share.” Nationally, Law Day was brought into being by Dwight D. Eisenhower through a proclamation in 1958.

As you may know, Law Day is a deep tradition in Oklahoma. Hicks Epton, Wewoka attorney and 1953 OBA president, launched the OBA’s “Know Your Liberties – Know Your Courts Week” while head of the OBA’s public relations committee in 1951. This event was established with the purpose of educating the public about the legal system and celebrating the liberties we have as Americans. The event spread across the nation and evolved into what we now know as Law Day. Law Day and related activities help the OBA accomplish its goal to, in the public interest, encourage practices that will advance and improve the honor and dignity of

the legal profession. You can learn more about this history on the OBA website at [www.okbar.org/lawday](http://www.okbar.org/lawday).

Law Day is a great opportunity for lawyers to show their pride in their profession. Regardless of the theme, it is important to step back from our daily projects and appreciate the role we play in society. Attorneys help guide clients through the legal process and make sure that the rule of law is understood and followed. Last year’s theme was “Cornerstones of Democracy,” and I like to think of attorneys as the brick masons responsible for laying the bricks, applying the mortar and repairing the cracks in our republic.

Regarding this year’s theme, ABA President Mary Smith stated, “We must all use our voices to maintain our system of laws and to ensure



that our democracy, as conceived, endures.” The ABA stated that the theme is intended to encourage “Americans to participate in the 2024 elections by deepening their understanding of the electoral process; discussing issues in honest and civil ways; turning out to vote; and, finally, helping to move the country forward after free and fair elections.”

When I think about this theme and how it relates to the practice of law, it brings to mind how lawyers help clients’ voices be heard. Attorneys act as the voice of their clients in a manner that is governed by rules and standards of professional conduct. Anyone can make a sign and picket a government building, and that action sometimes can be influential. Other methods, like filing a complaint (with the courts or an agency), are best done with the advice of counsel. We help our clients’ voices be heard every time we write a letter, file a document or speak on our clients’ behalf. That is an awesome responsibility and important to the function of our democratic republic.

There are many Law Day activities in which you can participate this year. I have had the opportunity to visit the Law Day festivities of many county bar associations and to take part in the Ask A Lawyer event. I hope you are able to join one this year!



A handwritten signature in black ink, appearing to read "Miles Pringle".

Miles Pringle is executive vice president and general counsel at The Bankers Bank in Oklahoma City. 405-848-8877 [mpringle@tbb.bank](mailto:mpringle@tbb.bank)

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# THE OKLAHOMA BAR Journal

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# IOWA TRIBE of OKLAHOMA





# The Last True People's Court: Oklahoma's Tribal Courts as an Access to Justice

By Robert Don Gifford

**"Today, in the United States, we have three types of sovereign entities – the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country."**  
– Justice Sandra Day O'Connor<sup>1</sup>

Native American tribes<sup>2</sup> are one of three sovereigns expressly described in the United States Constitution: the states, federal government and tribes.<sup>3</sup> Since the Indigenous nations do not fall within the definition of a state, they are viewed, in the words of Justice John Marshall, as "domestic dependent nations."<sup>4</sup> In turn, these sovereign nations and their "tribal courts" hold a unique place in Oklahoma's judicial landscape. With 574 federally recognized Native American tribal governments in the United States, there are 39 of these "third sovereigns" in Oklahoma, which also happens to have one of the largest Native American populations (16%) in the U.S.<sup>5</sup>

**Opposite page:** *The Iowa Tribe of Oklahoma sign in Perkins. Photo courtesy of the author.*

Of the 39 Oklahoma tribes, 28 of them fully exercise their sovereignty by operating their own independent tribal court systems.<sup>6</sup> The remaining Oklahoma tribes<sup>7</sup> rely on the Bureau of Indian Affairs' judicial system of the Courts of Indian Offenses (CFR Courts).<sup>8</sup> These "third sovereign" courts are more than just legal institutions. They each are a unique and independent cross-section of a tribe's unique culture that still operate within the "rule of law." Because of the large number of tribal courts, many lawyers are surprised to discover the large number of both civil and criminal cases resolved outside of the state district courts.<sup>9</sup>

## THE ORIGINS AND EVOLUTION OF TRIBAL COURTS

"Tribal courts systems have become increasingly sophisticated and resemble in many respects their

state counterparts." – *Oliphant v. Suquamish Indian Tribe*<sup>10</sup>

After the removal of many tribes from their homelands during the 1830s through the 1840s, then again during post-Civil War Reconstruction and President Andrew Jackson's forced removal policy, many tribes were forced into the "Indian territory" of what was to become Oklahoma.<sup>11</sup> The "Five Tribes," formerly known as the "Five Civilized Tribes,"<sup>12</sup> established their own legal systems in the 1880s.<sup>13</sup> In the western part of the territory that was to become Oklahoma, the federal government established the Court of Indian Offenses in 1886. As a part of federal policy, many tribal courts ceased to operate early into the 20th century.<sup>14</sup>

Oklahoma's tribal courts, as well as those throughout the United States, have one foot in

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the historical culture of the tribe and the other in a modern legal system that any attorney would recognize.<sup>15</sup> Many are surprised to learn that Native American tribal courts predate European contact,<sup>16</sup> with origins rooted in the customs and traditions that maintained order within each of the Indigenous tribes of North America.<sup>17</sup> One notable pre-statehood example is the Cherokee Nation.<sup>18</sup> By the 1830s, the Cherokees of Oklahoma had nine judicial districts with juries, appellate courts and a supreme court.<sup>19</sup> A review of these tribal cases demonstrated that most defendants tried were acquitted of the charges, with the most notable being the 1840 murder trial of Archilla Smith, a signer of the Treaty of New Echota, and Jesse Bushyhead, who both were defended by Stand Watie.<sup>20</sup>

As a result of the enactment of the Indian Reorganization Act of 1934,<sup>21</sup> the Oklahoma Indian Welfare Act<sup>22</sup> and subsequent federal laws, such as the Violence Against Women Act<sup>23</sup> and the Tribal Law and Order Act,<sup>24</sup> tribes were allowed to enact their own tribal codes and set up their own judicial systems.<sup>25</sup> The Indian Self-Determination Act of 1975<sup>26</sup> gave tribes the ability to provide for their own courts through federal grants and contracts. Many tribes have adopted their own legal codes that include cultural history and contemporary law.<sup>27</sup>

### THE RISE OF TRIBAL COURTS IN OKLAHOMA

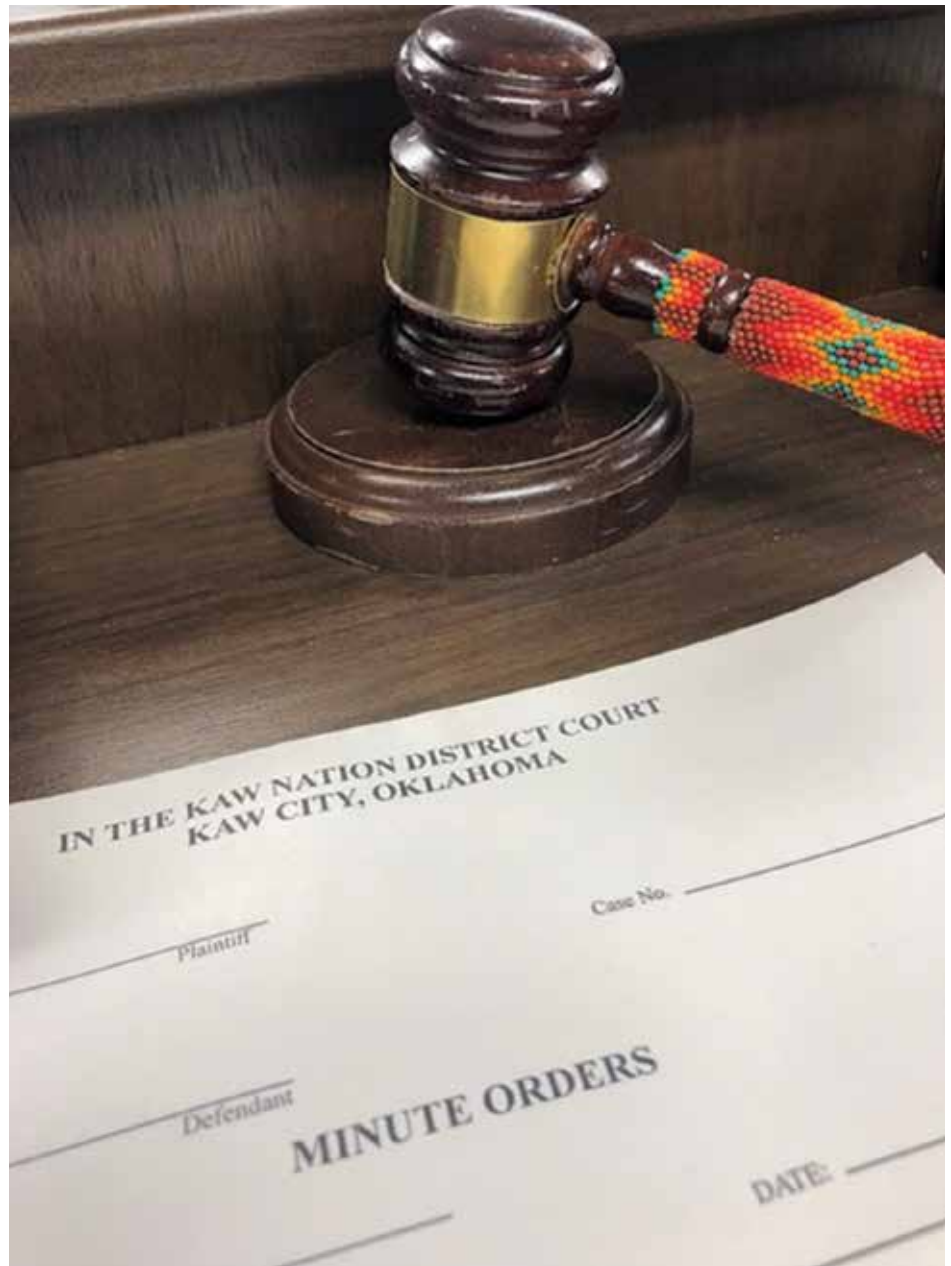
“Tribal courts are the last remains of a true ‘People’s Court’ for any litigant.” – Judge Lisa Otipoby (Comanche), district judge of the Muscogee (Creek) Nation Tribal Court

“Four minutes to Wapner,”<sup>28</sup> – Dustin Hoffman as Raymond Babbitt<sup>29</sup>

District courts in Oklahoma routinely heard civil matters in cases involving Native Americans.<sup>30</sup> However, when 49 of Oklahoma’s 77 counties were returned to “reservation” status after the U.S. Supreme Court’s opinion

in *McGirt v. Oklahoma* – discussing the Muscogee (Creek) Reservation<sup>31</sup> and how its progeny of cases<sup>32</sup> affected other tribes – the question of where cases must and could be heard in both criminal and civil matters became a hot topic that continues today.

From 1950 until about 1977, Oklahoma exercised all aspects of civil and criminal jurisdiction over



The bench at the Kaw Nation District Court in Kaw City. Photo courtesy of the author.

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tribal lands until a federal district court case in the Western District of Oklahoma, *United States v. Littlechief*, found that the state of Oklahoma could not prosecute an Indian for a crime on a “trust allotment.”<sup>33</sup> In 1979, the state of Oklahoma lost another jurisdictional battle when the state appellate court found the Chilocco Indian School<sup>34</sup> in Kay County to be a “dependent Indian community” and, thus, in “Indian Country” with no state criminal jurisdiction.<sup>35</sup> As tribal courts are now more prominent since *McGirt*, they are, as they always have been, an important part of the legal system in Oklahoma. As with any attorney venturing into a new courthouse in a different county, it takes the willingness to learn and adapt.

With 39 tribes in Oklahoma, many practitioners are soon surprised at the number of divorces, custody determinations,<sup>36</sup> adoptions, paternity determinations, child support orders, guardianships and name changes adjudicated daily within the boundaries of Oklahoma and outside of its state court system. Since *McGirt*, there have been many questions about which courts have jurisdiction in not only criminal matters but civil matters as well. Applicable tribal laws and federal regulations govern the Courts of Indian Offenses,<sup>37</sup> while tribal courts are governed by applicable federal laws<sup>38</sup> and tribal constitutional, statutory, common and administrative laws.

### SOURCES OF LAW WITHIN THE INDIAN NATIONS

“Among the Indians there have been no written laws. Customs handed down from generation to generation have been the only laws to guide them.” – George Copway (Kah-ge-ga-bowh), Ojibwa chief<sup>39</sup>



*The Muscogee (Creek) Nation District Court in Okmulgee. Photo courtesy of the author.*

“Watch out for bad medicine, though. Yeah, wear socks. Medicine comes up through your feet.”

– *Reservation Dogs*<sup>40</sup>

A practitioner who’s new to the tribal court system should be aware that both tribal district (trial) courts and appellate courts may vary from tribe to tribe in their structure and procedure.<sup>41</sup> Notably, there is not a single tribal appellate court that serves as a “Supreme Court” to all the tribal district courts. Tribal laws vary from tribe to tribe and may be based on a tribe’s constitution, code of laws, resolutions and ordinances. Surprising to some, the U.S. Constitution and Oklahoma Constitution do not necessarily apply within tribes;<sup>42</sup> however, that does not mean litigants are without fundamental protections in tribal court. First, in 1968, the U.S. Congress passed the Indian

Civil Rights Act,<sup>43</sup> which closely mirrors the Bill of Rights of 1791.<sup>44</sup> Tribes are required to provide the ability “to petition for redress of grievances” and the basic protections of due process, freedom of speech, protection against self-incrimination and other fundamental rights.<sup>45</sup> Additionally, many tribes have adopted substantive laws through their own legislative processes, which contain similar protections as those found in the Bill of Rights. Many of Oklahoma’s tribal courts also look to state or federal law and procedure to fill in any gaps as a matter of fairness and ease of tribal court practice for attorneys (and pro bono parties). Some tribes have tribal codes that direct if there is no tribal code addressing an issue to look to the federal or Oklahoma state code.<sup>46</sup>

In doing legal research, most tribal codes and sample forms are available online on a tribe’s

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The bench at the Seminole Nation Tribal Court in Wewoka. Photo courtesy of the author.

website.<sup>47</sup> Naturally, it would be advisable to always contact the tribal court clerk to ensure the latest codes are online. A practitioner should review not only tribal codes but the tribe's constitution, ordinances, legislative research<sup>48</sup> and "tribal resolutions" (as well as any local rules) before filing anything. Many tribal courts will also maintain physical fill-in-the-blank forms for pro se filers in matters of divorce, custody, guardianship or even protective orders. In addition to each of the tribes' websites, other organizations – such as Oklahoma Indian Legal Services,<sup>49</sup> Legal Aid Services of Oklahoma,<sup>50</sup> the National Indian Law Library of the Native American Rights Fund,<sup>51</sup> the Donald E. Pray Law Library at the OU College of Law<sup>52</sup> and the Chickasaw Nation Law Library at the OCU School of Law<sup>53</sup> – maintain access to tribal codes and laws on their websites.

Locating tribal court decisions, even those that may be precedential, might be difficult. Some tribal courts, such as the supreme courts for the Muscogee (Creek) Nation<sup>54</sup> and the Cherokee Nation,<sup>55</sup> keep many opinions and orders on their court website. While the online legal research database Lexis,<sup>56</sup> at the time of this writing, offers tribal court opinions for only one Oklahoma tribe, the Muscogee (Creek) Nation, it does offer other opinions from the Crow Tribe, the Eastern Band of Cherokee and the Navajo that may be used for persuasion. Legal publisher Thomson Reuters offers *West's American Tribal Law Reporter (National Reporter System)* in both hard-bound volumes and through the Westlaw Precision research database (which also offers opinions from the Cherokee Nation and the Sac and Fox Nation).<sup>57</sup> Notably, the Westlaw Precision database offers

Oklahoma tribal court reports going back to 1978, which includes Oklahoma tribal court case law.

## JURISDICTION

"Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories."  
– *Oklahoma Tax Commission v. Potawatomi Tribe*<sup>58</sup>

"Tonto, you may yet have your revenge." – Rennard Strickland<sup>59</sup>

The Oklahoma Constitution provides that "the [State] District Court shall have unlimited original jurisdiction of all justiciable matters."<sup>60</sup> While this statement of law is correct, the Oklahoma Constitution has traditionally had no applicability to tribal members residing within "Indian Country."<sup>61</sup> Because tribal court jurisdiction is a federal question, it is the federal courts that have the authority to determine whether a tribal court has jurisdiction in a particular case.<sup>62</sup> Generally, states do not possess jurisdiction, and state law will not have effect in "Indian Country" (the federal codified term) except through a specific grant of jurisdiction under federal law.<sup>63</sup> The jurisdictional framework is a complex flowchart of tribal law, federal law and state law, which becomes more complicated in cases involving non-tribal individuals on tribal land.

Practitioners should note that tribal courts have jurisdiction over both civil and criminal cases that involve tribal members, even those who are members of other tribes,<sup>64</sup> that occur within tribal lands and, in certain circumstances, over non-Natives who have significant contacts with the tribe.<sup>65</sup> In

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criminal matters, Congress gave the federal government exclusive authority to prosecute crimes that occurred in Indian Country when committed by or against Indians in 1885 through the Major Crimes Act.<sup>66</sup> The definition of “Indian Country” is found at 18 U.S.C. §1151 and includes: 1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, 2) “dependent Indian communities” and 3) all Indian allotments, the Indian titles to which have not been extinguished. Indian Country also includes land for which the title is held in trust by the U.S. for an individual Indian or Indian tribe.<sup>67</sup> Prior to *McGirt* and its progeny<sup>68</sup> restoring the reservation status to several tribes, Oklahoma’s “Indian Country” was generally described as a “checkerboard jurisdiction” and primarily found in the form of allotments or land held in trust by the federal government. Under the Violence Against Women Act,<sup>69</sup> tribes can not only exercise civil jurisdiction over non-Natives for the purposes of protective orders but also limited criminal jurisdiction over them for violations of a protective order or crimes against Indian children.

### THE INDIAN CHILD WELFARE ACT

“Can you see the wolves in this picture?” – *Killers of the Flower Moon*<sup>70</sup>

While the Indian Child Welfare Act (ICWA)<sup>71</sup> does not apply to tribal court proceedings, tribal courts do have presumptive jurisdiction in off-reservation custody proceedings<sup>72</sup> over a Native child (of that specific tribe).<sup>73</sup> The ICWA places certain procedural requirements in state court actions, as

well as on the courts themselves before removing Native children from their homes (or terminating parental rights of Native parents).<sup>74</sup> Transferring juvenile proceedings from state courts to tribal courts is clearly favored (absent parental objection); however, according to ICWA expert (and OBA member) C. Steven Hager,<sup>75</sup> the tribal court systems “should carefully ... make a choice in each case that is in the best interest of the parents, the children, and the tribe.”<sup>76</sup>

### BAR ADMISSIONS AND FINDING PENDING TRIBAL CASES

“If you want to be successful, it is this simple. Know what you are doing, love what you are doing. And believe in what you are doing.” – Will Rogers, Cherokee citizen and “Oklahoma’s favorite son”

As with other courts, most tribal courts require an attorney to be formally admitted to practice before the court. Many tribes’ bar applications will require a “letter

of good standing” from the bar association, and some may only want a list of references. While most tribal courts do not require attorneys to be members of the Oklahoma Bar Association, they do generally require passage of some state bar exam. Most tribal bar applications are available on the tribal court’s website.<sup>77</sup> Further, as with most courts, many tribal courts have rules as to attorney appearances to appear *pro hac vice*. It is worth noting that many tribes have provisions for non-attorney “lay advocates” to practice in those respective courts.

In addition, while most Oklahoma attorneys routinely look online for pending state district court or Supreme Court cases on the Oklahoma State Court Network (OSCN)<sup>78</sup> or through the On Demand Court Records System (ODCR),<sup>79</sup> there is not a single online database for all tribal courts. While a few of Oklahoma’s tribes have made their daily court dockets available through the ODCR,<sup>80</sup> most post their cases through their own court websites (*e.g.*, the Cherokee,<sup>81</sup> Choctaw<sup>82</sup> and Muscogee (Creek) Nation<sup>83</sup> courts offer the court records on their court websites).

### FULL FAITH AND CREDIT OR COMITY BETWEEN TRIBAL AND STATE COURTS

“One of the finest things about being an Indian is that people are always interested in you and your ‘plight.’ Other groups have difficulties, predicaments, quandaries, problems or troubles. Traditionally we Indians have had a ‘plight.’” – Vine Deloria Jr.<sup>84</sup>

There may be some who are unfamiliar with the tribal court system who may view it with



*The Kaw Nation Tribe’s dockets. Photo courtesy of the author.*

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skepticism.<sup>85</sup> As noted by OBA member and Arizona State University Sandra Day O'Connor College of Law Dean Stacy Leeds,<sup>86</sup> in legal matters with non-Native litigants, there has historically always been some speculative concern of "fairness and objectivity of tribal justice systems."<sup>87</sup> Time has shown that such concerns of bias are simply unwarranted. Such claims are no greater than those made by any lawyer who believes they were "hometowned"<sup>88</sup> while appearing for the first time in any given state district court in Oklahoma.

For more than 30 years, Oklahoma has given "full faith and credit" to the treatment of tribal court orders.<sup>89</sup> Oklahoma courts have long recognized the validity of marriages (and divorces) between tribal members even when those marriages (or divorces) would not be recognized under the laws of Oklahoma.<sup>90</sup> Even prior to that legislation, Oklahoma, as many other state<sup>91</sup> and federal<sup>92</sup> courts, concluded the federal full faith and credit statute<sup>93</sup> applies to tribal court judgments as judgments of "territorial courts."<sup>94</sup> Some examples of such recognition of tribal court decisions and orders include honoring child support orders,<sup>95</sup> domestic violence protection orders<sup>96</sup> and child custody orders.<sup>97</sup> A federal circuit court, as well as at least one tribal court, have also found that the Parental Kidnapping Prevention Act<sup>98</sup> mandates that both states and tribes honor the other's custody orders.<sup>99</sup> There are also obscure provisions of federal law that seem to mandate some state courts' following of tribal orders.<sup>100</sup>

## CONCLUSION

"Though many non-Native Americans have learned very little about us, over time we have had to learn everything about them." – Wilma Mankiller, chief of Cherokee Nation (1985-1995)<sup>101</sup>

In a state that derives its name from the Choctaw words "okla," meaning "people," and "homma" or "humma," meaning "red,"<sup>102</sup> with over 300,000 tribal members from various tribes within its boundaries, and throwing in the application of *McGirt*, an attorney should not exclude themselves from an active tribal court practice. While some attorneys may be hesitant to grow their practice into such an area because they are not tribal members themselves, the tribal court practitioners (including the judges) come from a variety of backgrounds, both Native and non-Native. Any attorney assisting a tribal member (or non-tribal member) has an opportunity to develop a needed and unique practice by stepping into tribal court. With these starting points, a diligent attorney can effectively represent a litigant in a tribal court system that is both fair and efficient and one that will be surprisingly familiar to the Oklahoma attorney. Oklahoma's tribal courts stand as a testament to the rise of the 39 distinct tribal cultures in the state in serving the people of Oklahoma in the face of both historical and contemporary challenges.<sup>103</sup>

## ABOUT THE AUTHOR



Robert Don Gifford is a solo practitioner in Oklahoma City at Gifford Law PLLC with an emphasis on Native

American law, criminal law, civil rights and military law, and he is currently one of the attorneys involved in the presidential commutation for Leonard Peltier. Mr. Gifford, a tribal member of the Cherokee Nation, is also a tribal court judge for the Seminole Nation, Iowa (Ioway) Tribe of Oklahoma, Kaw (Kanza) Nation, Absentee-Shawnee Tribe and Miami Tribe of Oklahoma, as well as a Comanche Nation Supreme Court justice.

## ENDNOTES

1. Sandra Day O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts," 33 *Tulsa L. J.* 1, 1 (1997).
2. The terms "Native American," "Indian," "tribal member" and "Indigenous" are used interchangeably throughout this article.
3. See generally, Jack Blair, "Demanding a Voice in Our Own Best Interest: A Call for a Delegate of the Cherokee Nation to the United States House of Representatives," 20 *Am. Indian L. Rev.* 225, 225-33 (1995).
4. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *United States v. Lara*, 541 U.S. 193, 204-05 (2004); see also Jeffery W. Massey, "The Cherokee Chief vs. The SCOTUS," *The Briefcase*, (publication of the Oklahoma County Bar Association), August 2023, p. 5 (Part I), and September 2023, p.6; available online at [www.okcbar.org](http://www.okcbar.org).
5. Ana I. Sánchez-Rivera, Paul Jacobs and Cody Spence, "A Look at the Largest American Indian and Alaska Native Tribes and Villages in the Nation, Tribal Areas and States," Oct. 3, 2023, available at <https://bit.ly/49PEWUE>.
6. There are more than 250-300 tribal courts and more than 150 tribal appellate courts throughout the United States. See Gregory D. Smith, "Native American Tribal Appellate Courts: Underestimated and Overlooked," 19 *J. App. Prac. & Process* 25, 25 (2018); see also Matthew L.M. Fletcher, "Indian Courts and Fundamental Fairness: Indian Courts and the Future Revisited," 84 *U. Colo. L. Rev.* 59, 71 (2013).
7. The Eastern Shawnee, Modoc, Ottawa, Peoria and Seneca-Cayuga tribes each use the Miami Agency CFR Court (Eastern Oklahoma Region), while the Apache, Caddo, Fort Sill Apache, Otoe-Missouria and Wichita and Affiliated Tribe all use the CFR Courts at Anadarko and Red Rock (Southern Plains Region). See generally, "Court of

Indian Offenses,” U.S. Department of Interior, at [www.bia.gov/CFRCourts](http://www.bia.gov/CFRCourts) (last visited Jan. 8, 2024).

8. The “CFR Courts” are considered “legislative courts” as described by Justice John Marshall in *American Ins. Co. v. 356 Bales of Cotton (Canter)*, 26 U.S. (1 Pet.) 511, 546 (1828).

9. Chadwick Smith and Stephanie Birdwell, *Cherokee Courts: A Historical and Modern Perspective* 17 (1993).

10. 435 U.S. 191, 211-12 (1978).

11. See generally, L. Susan Work, *The Seminole Nation of Oklahoma: A Legal History* 3 (University of Oklahoma Press, 2010).

12. See Stacy L. Leeds, “Defeat or Mixed Blessing? Tribal Sovereignty and the State of Sequoyah,” 43 *Tulsa L. Rev.* 5, n.2 (2007) (using “Five Tribes” to refer to the Cherokee, Chickasaw, Choctaw, Muscogee (Creek) and Seminole nations).

13. *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 625 (1970) (the court paid particular attention to the unique history of the Five Civilized Tribes, especially the provisions of their treaties, including the treaty with the Choctaw, Sept. 27, 1830, 7 Stat. 333-34, which noted “no part of the land granted to them shall ever be embraced in any Territory or State.” See *id.* at 625. In *Montana v. United States*, 450 U.S. 544 (1981), the court noted the “special historical origins of the Choctaw and Cherokee treaties” that gave those tribes greater property rights than those of other tribes. See *id.* at 555).

14. See discussion in *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439 (1989).

15. See Daniel L. Lowery, “Developing a Tribal Common Law Jurisprudence: The Navajo Experience,” 1969-1992, 18 *Am. Indian L. Rev.* 379, 381-87 (1993).

16. See *Cohen’s Handbook of Federal Indian Law*, (Nell Jessup Newton et al. eds., 2012), §4.01[1] [a] (remarking that most tribes had informal legal systems prior to contact with European nations).

17. See, e.g., Rennard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court*, (1975).

18. See generally, *The Constitution and Laws of the Cherokee Nation: Passed at Tahlequah, Cherokee Nation*, 1839-51, at 21-26 (1852).

19. Bethany R. Berger, “Power over this Unfortunate Race: Race, Politics and Indian Law in United States v. Rogers,” 45 *Wm. & Mary L. Rev.* 1957 (April 2004).

20. See generally John Howard Payne, *Indian Justice* (Grant Foreman ed., Univ. of Okla. Press 2002) (A 1840 Cherokee murder trial in Tahlequah of Archilla Smith for the slaying of John McIntosh with a knife at Tahlequah.).

21. 25 CFR §§416, *et seq.*

22. 25 CFR §503.

23. 42 U.S.C. §136.

24. 42 U.S.C. §305.

25. 25 CFR §11.

26. See Public Law 93-638; Title 25 U.S.C. §450, *et seq.*

27. Justin B. Richland, 2008. *Arguing with Tradition: The Language of Law in Hopi Tribal Court*; Chicago, IL: University of Chicago Press.

28. Judge Joseph A. Wapner (1919-2017), a former California Superior Court judge, was the first presiding judge of the reality court television show *The People’s Court* from 1981 to 1983.

29. *Rain Man*, United Artists, 1988.

30. *Whitehorn v. Whitehorn*, 170 Okl. 152, 36 P. 2d 943 (1934); *Le Clair v. Calls Him*, 106 Okl. 247, 233 P. 1087 (1925), (upholding district court’s order setting aside divorce decree).

31. The statutes that provided for allotment of tribal lands did not disestablish the Muscogee (Creek) Nation Reservation. See also *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017) for a review of the allotment legislation.

32. See *McGirt v. Oklahoma*, 591 U.S. \_\_\_\_ (2020) (Muscogee (Creek) Nation); *Bosse v. State*, 2021 OK CR 30, 499 P.3d 771, *cert. denied*, 212 L. Ed. 2d 23, 142 S. Ct. 1136 (2022) (Chickasaw Nation); *Hogner v. State*, 2021 OK CR 4, 500 P.3d 629 (Cherokee Nation); *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867, *cert. denied*, 211 L. Ed. 2d 618, 142 S. Ct. 935 (2022) (Choctaw Nation); *Grayson v. State*, 2021 OK CR 8, 485 P.3d 250, *cert. denied*, 211 L. Ed. 2d 618, 142 S. Ct. 934 (2022) (Seminole Nation); *State v. Lawhorn*, 2021 OK CR 37, 499 P.3d 777 (Quapaw Nation); *State v. Brester*, 2023 OK CR 10, 531 P.3d 125 (Ottawa Nation, Peoria Nation and Miami Tribe of Oklahoma).

33. *United States v. Littlechief*, 573 P.2d 264 (1977).

34. In 1880, at the end of the “Indian Wars,” the United States government created five original Indian boarding schools across the country (Carlisle, Haskell, Fort Simcoe, Chemawa and Chilocco). In 1882, Congress authorized an Indian school to be built in the Cherokee outlet near the southern boundary of Kansas and near the Ponca and Pawnee reservations (now Kay County). 22 Stat. 68, 85, ch. 163. Thereafter, on July 12, 1884, President Chester A. Arthur issued an executive order setting aside land for the Chilocco Indian Reserve. The school closed in 1980, and in a 1986 Act of Congress, the Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa were given part of the school grounds as the “Council of Confederated Chilocco Tribes.”

35. *C.M.G. v. State*, 594 P.2d 798 (Okla. Crim. App.), *cert. denied*, 444 U.S. 992 (1979).

36. 25 USC §1903 (tribal court means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe or any other administrative body of a tribe vested with authority over child custody proceedings).

37. 25 C.F.R. §11.100, *et seq.*

38. *Indian Civil Rights Act of 1968*, 25 U.S.C. §§1301-1303.

39. George Copway, *Indian Life and History*, 1858, Boston, Albert Colby and Company; p.141.

40. FX Network, Season 2, Episode 5, 2022.

41. Eugene K. Bertman, “Tribal Appellate Courts: A Practical Guide to History and Practice,” 84 *OBJ* 2115 (2013).

42. See *Oliphant v. Suquamish Tribe*, 435 U.S. 191, 194, n. 3 (1978) (citing *Talton v. Mayes*, 163 U.S. 376 (1896)).

43. *Indian Civil Rights Act of 1968*, 25 U.S.C. 1301-1303.

44. See Michael J. Douma, “Symposium: The Origins and Iconization of the Bill of Rights: How the First Ten Amendments Became the Bill of Rights,” 15 *Geo. J.L. & Pub. Pol’y* 593 (“Although the general idea of a bill of rights was often associated with the first ten amendments, Americans in the late eighteenth and early nineteenth century did not use the term ‘the bill of rights’ and ‘the first ten amendments’ interchangeably, in a one-to-one correspondence.”).

45. 25 U.S.C. §1302.

46. Darla W. Jackson, “Caution – Slow Progress Ahead: Accessing and Researching Tribal Court Opinions,” 91 *OBJ* 48 (2020).

47. See, e.g. tribal court webpages for the: Seminole Nation (<https://bit.ly/4aarKcW>), Choctaw Nation (<https://bit.ly/3Pgo6Gn>), Chickasaw Nation (<https://bit.ly/48ONt9c>), Quapaw Nation (<https://bit.ly/3VeyDFJ>), Comanche Nation (<https://bit.ly/3VkmHaa>), Kaw Nation (<https://bit.ly/48O3w7a>) and Iowa Tribe of Oklahoma (<https://bit.ly/4a6KdHg>), (last visited Jan. 8, 2024).

48. Cherokee Nation Legislative Research Center, available online at <https://bit.ly/3Txl6rF> (last visited Dec. 5, 2023).

49. See <http://tribalcodes.info/index.html> (last visited Jan. 8, 2024).

50. See <https://oklaw.org/issues/tribal-law> (last visited Dec. 5, 2023).

51. See <https://bit.ly/4c8jPhZ> (last visited Dec. 5, 2023).

52. See <https://thorpe.law.ou.edu> (last visited Dec. 5, 2023).

53. See <https://bit.ly/3VkmqKK> (last visited Dec. 5, 2023).

54. See Supreme Court for the Muscogee (Creek) Nation homepage, <https://bit.ly/3lydY7W> (last visited Dec. 22, 2023).

55. See Cherokee Nation Judicial Branch homepage, <https://bit.ly/3v3snGd> (last visited Dec. 5, 2023).

56. See generally, LexisNexis or Lexis+ or Lexis+ AI at <https://bit.ly/49ZaJ5g> (last visited Jan. 8, 2024).

57. See <https://1.next.westlaw.com> (last visited Dec. 22, 2023).

58. 498 U.S. 505, 509 (1991).

59. *Tonto’s Revenge* (University of New Mexico Press, 1997).

60. See Article 7, Section 4.

61. *Cf. Deo v. Parish*, MA-2022-937 (Okla. Court of Crim. Appeals, Dec. 14, 2023).

62. *Plains Commerce Bank v. Long Family Land and Cattle Co., Inc.*, 554 U.S. 316 (2008).

63. See *Oklahoma v. Castro-Huerta*, 597 U.S. \_\_\_\_ (2022).

64. *Williams v. Lee*, 358 U.S. 217 (1959) (suggests state courts have no jurisdiction to grant divorces when both parties are Native and domiciled in Indian Country).

65. *Montana v. United States*, 450 U.S. 544 (1981), *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, 579 U.S. 809 (2016).

66. 18 U.S.C. §1153.

67. *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991).

68. See endnote 32, *supra*.

69. 42 U.S.C. §136.

70. Paramount Pictures/Apple Studios, 2024.

71. See 25 U.S.C. §§1901-1963. See Ann Murray Haag, “The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services,” 43 *Tulsa L. Rev.* 149, 149 (2007) (The ICWA was first enacted by Congress in 1978 to slow and reverse the historical treatment of Native children in their removal from their tribal homes.).

72. See 25 U.S.C. §1902 and *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36, (1989) (explaining the substantive requirements of the ICWA) (Indian children should be placed in foster and adoptive homes, absent good cause to the contrary, which “reflect the unique values of Indian culture.”); see also 25 U.S.C. §1915 (procedure for placing Indian children in foster care and adoption).

73. 25 U.S.C. §1903 (the ICWA defines an “Indian child” as “any unmarried person who is under age eighteen and is either 1) a member of an Indian tribe or 2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”).

74. See 25 U.S.C. §1911(a) (restricting state court jurisdiction over Indian children domiciled on Indian reservations; requiring state courts to transfer jurisdiction over child custody proceedings involving non-reservation domiciled Indian children to tribal courts; and allowing Native American parents and tribes to intervene in state court proceedings); 25 U.S.C. §1912(a) (governing involuntary placements by state courts and requiring Indian tribes to receive notice of proceedings; requiring parents to be appointed counsel; and establishing the burden of proof and requisite evidentiary showings before a foster care placement or termination of parental rights can be accomplished in state court); 25 U.S.C. §1913(c) (governing the requirements for a voluntary placement of a Native child in foster care or voluntary termination of parental rights).

75. Until his untimely death, C. Steven Hager (1958–2021) served as the director of litigation at Oklahoma Indian Legal Services for more than 30 years, chief judge for the Kickapoo Tribe in Kansas and justice on the Kaw Nation Supreme Court and author of 24 editions of *The Indian Child Welfare Act: Case and Analysis*.

76. C. Steven Hager, “Transfer to Tribal Courts in Oklahoma under the Indian Child Welfare Act and Factors for the Tribal Court’s Consideration,” 81 *OBJ* 389 (2010).

77. See generally, Cherokee Nation Bar Association homepage, <https://bit.ly/48P4uQv>; Kaw Nation Bar Application, <https://bit.ly/49NIDvc>; (last visited Dec. 5, 2023).

78. See generally, [www.oscn.net/v4](http://www.oscn.net/v4) (last visited Jan. 8, 2024).

79. See generally, [www1.odcr.com](http://www1.odcr.com) (last visited Dec. 22, 2023).

80. The tribal courts for the Chickasaw Nation, Quapaw Nation, Sac and Fox Nation and Wyandotte Nation all provide case file information via [www1.odcr.com](http://www1.odcr.com), but these tribal courts do not provide free access to the pleadings or documents entered as case entries on the docket. However, some images are available for a subscription fee.

81. Public Access Portal for the Cherokee Nation Tribal Court, <https://bit.ly/4cd4mNK>, (last visited Jan. 8, 2024).

82. Judicial Branch Case Records, <https://bit.ly/4a68nBr> (last visited Jan. 8, 2024).

83. Public Access Portal for the Muscogee (Creek) Nation District Court, <https://bit.ly/3uYBPuy> (last visited Jan. 8, 2024).

84. *Custer Died for Your Sins* (Macmillan, 1969).

85. *Little Horn State Bank v. Crow Tribal Court*, 690 F. Supp. 919 (D. Mont. 1988), vacated, 708 F. Supp 1561 (D. Mont. 1989) (“The Crow Tribal Court, acting as a sort of ‘kangaroo court,’ has made no pretense of due process or judicial integrity.”).

86. Stacy Leeds, dean of the Sandra Day O’Connor College of Law at Arizona State University; Cherokee Nation tribal member, appeals judge for the Hualapai Tribe in Arizona and the Rincon Band of Luiseno Indians in California. She has also previously served as dean at the University of Arkansas School of Law and as a justice for both the Cherokee Nation Supreme Court and the Kaw Nation Supreme Court.

87. Stacy L. Leeds, “[dis]Respecting the Role of Tribal Courts,” 42:3 *Hum. Rts.* 20, 20 (2017) (pointing out that this “lack of faith in tribal courts is typically limited to situations involving non-Indian litigants”).

88. Linda Karr O’Connor, “General Article: Best Legal Reference Books of 1995,” 88 *Law Libr. J.* 178 (Spring 1996) (“Don’t bother checking Black’s and Ballentine’s for the word hometowned. According to the Real Life Dictionary, it’s ‘legalese for a lawyer or client suffering discrimination by a local judge who seems to favor local parties and/or attorneys over those from out of town.’”).

89. Okla. Stat. tit. 12, §728; see also Okla. St. Dist. Ct. R. tit. 12, §30.

90. *Cyr v. Walker*, 29 Okla. 281, 116 P. 931 (1911); *Buck v. Branson*, 34 Okla. 807, 127 P. 436 (1912); *James v. Adams*, 56 Okla. 450, 155 P. 1121 (1915); *Unussee v. McKinney*, 133 Okla. 40, 270 P. 1096 (1928); *Thomas v. Healey*, 152 Okla. 93, 3 P.2d 1047 (1931).

91. See *Barrett v. Barrett*, 878 P.2d 1051, 1055 (Okla. 1994) (holding that state courts must honor tribal court judgments but that the trial court erred in not allowing a party to attack a tribal court order based upon fraud); *Sheppard v. Sheppard*, 655 P.2d 895, 902 (Idaho 1982) (holding that a tribal decree of adoption is entitled to full faith and credit as a decree of a territory under 28 U.S.C. §1738 (1994)); *Jim v. CIT Fin. Serv. Corp.*, 533 P.2d 751, 752 (N.M. 1975); *Halwood v. Cowboy Auto Sales*, 946 P.2d 1088, 1090 (N.M. Ct. App.); *Chischilly v. General Motors Acceptance Corp.*, 629 P.2d 340, 344 (N.M. Ct. App. 1980); *In re Adoption of Buehl*, 555 P.2d 1334, 1342 (Wash. 1976); see also *Walksalong v. Mackey*, 549 N.W.2d 384, 387 (Neb. 1996); *Jackson County ex rel Smoker v. Smoker*, 445 S.E.2d 408, 411 (N.C. Ct. App. 1994); *City of Yakima v. Aubrey*, 931 P.2d 927, 929 (Wash. Ct. App. 1997); cf. *Brown v. Babbit Ford, Inc.*, 571 P.2d 689, 694 (Ariz. Ct. App. 1977) (holding that Arizona state courts were not required to give full faith and credit to enactments of a Navajo tribal council); *Lohnes v. Cloud*, 254 N.W.2d 430, 433 (N.D. 1977).

92. See *United States ex rel. Mackey v. Cox*, 59 U.S. 100, 103 (1856) (implying that an Indian tribe is a domestic territory whose “laws and proceedings of the Cherokee territory, so far as relates to rights claimed under them, should not be placed upon the same footing as other territories in the Union.”).

93. 28 U.S.C. §1738A.

94. See, e.g., *Tracy v. Superior Ct. of Maricopa County*, 810 P.2d 1030, 1051 (Ariz. 1991) (finding that a subpoena to appear in a Navajo court should be enforced under the Uniform Attendance of Witnesses Act).

95. See 28 U.S.C. §1738B; see also *In re: Day v. State*, 900 P.2d 296, 300 (Mont. 1995) (noting that the Child Support Act includes “Indian Country” in the definition of “states”).

96. See 18 U.S.C. §2265.

97. See 25 U.S.C. §1911(d). A child custody order under the Indian Child Welfare Act is an order of foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement. See 25 U.S.C. §1903(1). Interestingly, the Indian Child Welfare Act does not mandate that a tribal court grant full faith and credit to a state court order creating the somewhat anomalous situation where a tribal court could gain a transfer of jurisdiction over a

child custody proceeding and ignore the state court rulings up to that point of transfer. See generally 25 U.S.C. §§1911 (1994) (providing rules for Indian tribe jurisdiction over Indian child custody proceedings).

98. 28 U.S.C. §1738A.

99. See *In re: Larch*, 872 F.2d 66, 68 (4th Cir. 1989); *Eberhard v. Eberhard*, No. 96-005-A, slip op. at 6 (Cheyenne River Sioux Tribal Ct. App. Feb. 18, 1997).

100. Examples include Public Law 280 itself, which mandates that state courts apply the laws of a tribe, including customary laws, if they do not conflict with state law, in resolving a private dispute. See 25 U.S.C. §1322(c) (requiring states to give full force and effect to any tribal ordinance or custom, exercised in the tribal authority, in determination of constitutional civil causes of action, so long as it is not inconsistent with applicable civil law of the state); 25 U.S.C. §483(a) (requiring a state court to defer to tribal court jurisdiction in a foreclosure of a mortgage on trust land).

101. *Every Day Is a Good Day: Reflections by Contemporary Indigenous Women* (Fulcrum Publishing, 2011).

102. See Muriel H. Wright, *A Guide to the Indian Tribes in Oklahoma*, 70 (1951).

103. Chadwick Smith and Faye Teague, “The Response of the Cherokee Nation to the Cherokee Outlet Centennial Celebration: A Legal and Historical Analysis,” 29 *Tulsa L.J.* 263, 293 (1993).



# OPENING YOUR LAW PRACTICE

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Jim Calloway, OBA Management Assistance Program
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Jim Calloway and Julie Bays, OBA Management Assistance Program
- 11:00 a.m. Break**
- 11:10 a.m. Professional Liability Insurance and Risk Management**  
Phil Frain, President, Oklahoma Attorneys Mutual Insurance Company
- 12:15 a.m. Lunch**  
Provided by Oklahoma Attorneys Mutual Insurance Company
- 12:30 p.m. Tools of the Modern Law Office, Hardware/Software and Fastcase**  
Julie Bays, OBA Management Assistance Program
- 1:30 p.m. Artificial Intelligence in the Legal Profession**  
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 1:50 p.m. Break**
- 2:00 p.m. Trust Accounting and Legal Ethics**  
Gina Hendryx, OBA General Counsel
- 2:50 p.m. Break**
- 3:00 p.m. How to Succeed in Law Practice**  
Jim Calloway and Julie Bays, OBA Management Assistance Program
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# The Unfortunate Path: The History Leading to the Indian Child Welfare Act

By J. Renley Dennis

**T**OO OFTEN, LAWYERS BECOME DESENSITIZED to the horrors and experiences we hear from our clients and each other. This can be especially true in Indian Country, where tragedies like the Trail of Tears are taught to children as the “land runs,” which celebrate genocide.<sup>1</sup> The modern discussions surrounding the Indian Child Welfare Act (ICWA) often fail to address the historical underpinnings of the countless broken promises made by the United States to the various tribes throughout the country.

The goal of this article is two-fold. First, it will give some background information on why the ICWA came to exist by providing historical context that is not often discussed when the ICWA is being litigated. Second, it will hopefully encourage readers to seek other sources of information and continue to self-educate themselves on this topic and its historical implications. Let this article be the beginning and not the end of your education on this crucial topic, especially here in Oklahoma.

## THE FIRST CHILDREN REMOVED: BOARDING SCHOOLS

The true first “removal” period would accurately be the era often referred to as the Trail of Tears. Following that period, by the 1870s,

federal policy regarding the tribes was assimilation. This attempt to destroy tribal identities peaked around 1879 with the introduction of boarding schools. The Carlisle Indian Industrial School in Pennsylvania opened that year and began enrolling students. The initial head of the school, Capt. Richard Pratt, summarized the school’s mission as “all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.”<sup>2</sup> The school “became the model for 408 similar federal institutions nationwide.”<sup>3</sup>

To quash any resistance, Congress and the enforcers of this federal policy withheld rations, furnishings and funding from families and tribes that would not surrender their children. According to the Bureau of Indian Affairs (BIA)

records, when economic oppression was not enough, federal officials resorted to abduction.<sup>4</sup> According to an official report in 1886, federal officers would “visit [Indian] camps unexpectedly with a detachment of [officers] and seize such children as were proper and take them away to school, willing or unwilling.”<sup>5</sup> These officials even described this act as chasing and capturing the children like “so many wild rabbits.”<sup>6</sup>

While in attendance at these boarding schools such as Carlisle, the practices to rid the world of Indians included but were not limited to:

- 1) Changing the children’s names to English names
- 2) Cutting the children’s hair
- 3) Confiscating traditional clothing and regalia

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- 4) Prohibiting the use of any language other than English
- 5) Prohibiting cultural and religious practices
- 6) Forcing Christianity onto the children
- 7) Separating the children from other children in their family and tribe<sup>7</sup>

To enforce these policies and practices, the schools would:

- 1) Whip and lash the children
- 2) Withhold food from the children
- 3) Place the children in solitary confinement<sup>8</sup>

“Even compliant students faced [r]ampant physical, sexual, and emotional abuse; disease; malnourishment; overcrowding; and lack of health care.”<sup>9</sup> While repugnant to modern sensibilities, this is rarely

acknowledged when addressing issues surrounding the ICWA.

Serving injury with insult, 95% of the funding for these schools came from “Indian trust fund monies” raised by selling Indian land.<sup>10</sup> The schools would supplement that funding by using what has been called the “outing system,”<sup>11</sup> which involved sending the children to live with white families over the “summer break.” The children would work on the farms and do household chores for the families. In exchange, the families would compensate the schools.<sup>12</sup>

In review of this brief explanation of the shameful history behind boarding schools and policies, it is hard to see these schools as anything other than prisons for children. In 1928, the *Meriam Report* investigated many of these schools and determined they provided well below adequate care and should

be shut down.<sup>13</sup> In 1971, 17% of all school-age Indian children were still held in boarding schools.<sup>14</sup>

### THE SECOND REMOVAL: FOSTER HOMES AND ADOPTIONS

The forcible removal of Indian children evolved from the boarding school era. This time, instead of federal officials, it was the policies and practices of state and local officials. The prevailing belief was that a reservation was an unsuitable environment to raise children. The proposed “solution” was to take all school-age children out of Indian Country and allow “civilized” people to raise them.<sup>15</sup>

In other words, off-reservation foster care and non-Indian home adoptions became a prevailing practice. The process for these foster care placements and adoptions included:

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- No legal counsel for the children or their parents
- No courtroom or formal legal setting
- The threat of or actual withholding of welfare benefits
- Fear of jail or imprisonment
- Abduction<sup>16</sup>

In 1958, the BIA and the Child Welfare League of America established the Indian Adoption Project, which emphasized adoption into non-Indian homes.<sup>17</sup> A 1969 study by the Association on American Indian Affairs (AAIA) showed that the rates of adoption and foster care placement of Indian children were higher than those of non-Indian children.<sup>18</sup> But the rates varied from state to state. In Washington, the adoption of Indian children was 19 times higher than the adoption of other children versus 1.3 times higher in Arizona.<sup>19</sup> Foster care placement for Indian children was 15.7 times higher than for other children in South Dakota while 2.6 times higher in Arizona.<sup>20</sup> It is important to note that Arizona still had high rates of Indian child placements in boarding schools at the time of the 1969 study.<sup>21</sup> Approximately 25-35% of Indian children had been separated from their families.<sup>22</sup>

This information was presented to Congress in 1974. These studies, along with testimony and the important need for legislation recognizing the cultural and traditional practices of Native Americans, led to the beginning stages of the ICWA. Some of the submitted statements provide shocking examples of the mistreatment and dehumanization these children endured. Norbert S. Hill, tribal manager of the Oneida Tribe of Indians of Wisconsin Inc., submitted a statement to Congress that included the following:

In Rural areas the county and state officials in a great many cases are nothing more than little Caesars who control the destiny of the less fortunate.

Some cases in point are as follows:

- A. Two sisters, 15 and 16, were placed in a foster home where the foster father molested the 16 year old. She ran away several times and was then placed in a state institution. She remained there until she was eighteen, when she was released she had no one to turn to for guidance; again she ended up in a group home with an illegitimate child. The child was placed in a foster home in another state.
- B. An incident was witnessed where a foster father was out late at night looking for a 12 year old girl with two dogs and two of his sons. She had according to him run away. His language in describing the girl was most despicable.
- C. A grandmother who tried to keep her grandchild while her daughter was in a rehabilitation center had the child forcibly taken from her. The child was placed in a foster home for a fee.
- D. A 10 day old baby was placed with relatives while the mother sought employment. After three months the Department of Social Services removed the baby. The

people that had given care to the baby were told, "that because of the baby's Indian background it would have to be placed in a second-rate home."<sup>23</sup>

William Byler, then executive director of the AAIA, also provided a statement to the U.S. Senate. He explained that "the dynamics of Indian extended families are largely misunderstood" because an Indian child might have scores of relatives who are considered close relatives of the family and who can be relied upon for the care of the child. But social workers who are unfamiliar with the ways of Indian family life assume that leaving a child with someone outside the nuclear family is socially irresponsible and amounts to neglect, and they use that as grounds for terminating parental rights.<sup>24</sup> Mr. Byler presented several examples of the treatment of Indian children in adoptive and foster homes from various states. In South Dakota, the Department of Welfare "petitioned a State court to terminate the rights of a Sisseton-Wahpeton Sioux mother to one of her two children on the grounds that he was sometimes left with his sixty-nine-year-old great-grandmother." Upon being questioned by the mother's attorney, the social worker admitted that the four-year-old son was well cared for but simply added that the great-grandmother "is worried at times."<sup>25</sup> In California, state officials attempted to use "poverty" as a standard for separating a Rosebud Sioux mother and child. The mother had arranged for the child to move with her aunt to California, and the mother would arrive a week later. By the time the

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But social workers who are unfamiliar with the ways of Indian family life assume that leaving a child with someone outside the nuclear family is socially irresponsible and amounts to neglect, and they use that as grounds for terminating parental rights.<sup>24</sup>

mother had arrived, the child had been removed from her home and placed in a “pre-adoptive home” by California officials. California social workers claimed that even though they lacked any evidence that the mother was an unfit parent, “it was their belief that an Indian reservation is an unsuitable environment for a child and that the pre-adoptive parents were financially able to provide a home and way of life superior to the one furnished by the natural mother.”<sup>26</sup>

An Oglala Sioux mother was tricked by two Wisconsin women into signing adoption papers under the pretense that she was signing a permission slip.<sup>27</sup> A Paiute mother’s parental status was challenged in Nevada as a result of traffic violations.<sup>28</sup> A child, Ivan Brown, was spared from abduction when a sheriff and a social worker, along with prospective foster parents, “fled when the tribal chairman ran to get a camera to photograph their efforts to wrest him from his Indian guardian’s arms.”<sup>29</sup> Ivan Brown’s rescue from the local officials’ attempts to abduct him is just

one of many examples provided to Congress by Mr. Byler. Other statements and testimony were provided to Congress between 1974 and 1978 on this issue.<sup>30</sup>

#### **THUS, CONGRESS PASSED ICWA**

While enacted in 1978, the research supporting and leading up to the ICWA began in the 1960s. That research, most of which has been entered into the legislative history of the ICWA, showed:

- One-third of American Indian/Alaskan Native (AI/AN) children were removed from their families and placed in foster care or adoptive homes.
- 85% of foster home placements and 90% of adoptions placed these children in non-Indian homes.
- Most of these children were removed not because of abuse or neglect but because of a lack of understanding of tribal customs and practices, stereotypes and biases held by individuals

making key decisions in the child welfare and placement process.<sup>31</sup>

Following this study, Congress unanimously passed the ICWA in 1978.<sup>32</sup> The legislation passed was a result of the efforts of many tribal communities, the AAIA and the North American Indian Women’s Association.

Following the ICWA’s creation, two families from Michigan shared their stories. Eight-year-old Edward Walksnice was adopted by a Michigan couple in the Delta County Courthouse. The adoption was conducted, however, by a special session of the Northern Cheyenne Tribal Court, whom the Delta County Court granted use of their facilities. The Michigan couple filed for the adoption of Edward in state court, which prompted the Northern Cheyenne to challenge its jurisdiction. The adopting couple agreed to tribal court jurisdiction. The adoption was granted, but in accordance with that tribe’s customs, the natural family’s parental rights were not terminated, and

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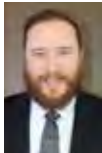
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both families continued to have a relationship with him. Following the hearing, the judge in the state court action dismissed the suit on the grounds that the state lacked jurisdiction.<sup>33</sup>

## CONCLUSION

This summary of the history of the ICWA barely touches on the painful history leading up to the ICWA. The purpose of the ICWA is “to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture.”<sup>34</sup> Edward Walksnice’s story is just one example of how the ICWA can work in the best interests of children, families and tribes. The ICWA was designed to allow state and tribal officials to work together.<sup>35</sup>

## ABOUT THE AUTHOR



A member of the Choctaw Nation, J. Renley Dennis received his J.D. and master’s degree in Native American studies from OU in 2017. Mr. Dennis has been an attorney at Whitten Burrage since 2017 and works closely with tribal governments. He also works in the areas of insurance bad faith, personal injury, breach of contract, wrongful death and represents sovereign entities and arms of the state in litigation, including OU.

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# Bridging the Gap: A Systematic Guide to Tribal Code Drafting

*By Chloe M. Moyer*



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**“THE ABILITY TO IMPACT SOCIETY through well-written legislation is unparalleled.”<sup>1</sup> The ability of tribal governments to articulate what their people believe and protect and preserve the tribe’s culture is paramount to its very existence.<sup>2</sup> Tribal practitioners are tasked with making sense of the vastly different eras of federal law and policy surrounding Indian tribes and understanding the tribe’s traditional, cultural and spiritual values, while artfully selecting words to shape their current society and preserve its existence for the seven generations to come. The tribal practitioner must “bridge the gap.”**

## BRIDGING THE GAP

*What Does it Mean to  
“Bridge the Gap”?*

Bridging the gap means the tribal practitioner must critically analyze the four sources of authority that determine the extent of an Indian tribe’s powers and the limitations imposed upon said powers. The four sources of authority are inherent authority, constitutional authority, congressional authority and judicial authority. The tribal practitioner should spend most of their time analyzing the situation that is the subject of the requested legislation, its problems and solutions, while focusing on the tribe’s traditional, cultural and spiritual values that must be incorporated into the legislation. Once the tribal practitioner understands the mission or purpose behind drafting the legislation, they must bridge

the gaps between the legislation’s mission or purpose and the four sources of authority. The following sections discuss the “gaps” (each of the four sources of authority), the “tools” needed to bridge the gaps and the instructions on how to bridge the gaps.

### *The Four Sources of Authority*

**Inherent authority.** Inherent authority can be described in two concepts. The first is related to the phrase “since time immemorial,” which appears in many cases, laws, articles and other sources. Since time immemorial is “used by Indigenous Peoples to describe the temporal depth of their connections with ancestral lands.”<sup>3</sup> It means “indefinite in the time of history.”<sup>4</sup> Since time immemorial, Indian tribes have existed and maintained their continuity

through thousands of years of oral traditions passed down to the next generations. Since time immemorial means that before Europeans came to North America, Indian tribes were forming “complex social, political, economic, and cultural systems.”<sup>5</sup>

The second concept of inherent authority is related to the phrase “bedrock principles.” Legal authors and officials began articulating the basic powers of Indian tribes after the enactment of the Indian Reorganization Act of 1934 (IRA).<sup>6</sup> In 1978, the Supreme Court adopted these bedrock principles.<sup>7</sup> The bedrock principles include the following powers:

1. The power to adopt a form of government, to create various offices and to prescribe the duties thereof ...

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2. To define the conditions of membership within the tribe ...
3. To regulate the domestic relations of its members ...
4. To prescribe rules of inheritance ...
5. To levy dues, fees, or taxes upon the members of the tribe and upon nonmembers residing or doing any business of any sort within the reservation ...
6. To remove or to exclude from the limits of the reservation nonmembers of the tribe ... and to prescribe appropriate rules and regulations governing such removal and exclusion, and governing the conditions under which nonmembers of the tribe may come upon tribal land or have dealings with tribal members ...
7. To regulate the use and disposition of all property within the jurisdiction of the tribe and to make public expenditures for the benefit of the tribe out of tribal funds ...
8. To administer justice with respect to all disputes and offenses of or among the members of the tribe ...<sup>8</sup>

The tribal practitioner must understand that the bedrock principles do not capture all the powers tribes have retained since time immemorial. The tribal practitioner should be developing legislation that systematically integrates both concepts of inherent authority by artfully drafting language that ties in the bedrock principles while not limiting an Indian tribe's inherent authority derived from time immemorial.

**Constitutional authority.** When determining what constitutional authority an Indian tribe has, the tribal practitioner must look at the Constitution of the United States (the Constitution) and the Indian tribe's constitution. This section will discuss a brief history of the Constitution, treaties and tribal constitutions, as well as the power granted to Indian tribes and the limitations upon said powers that are produced in the two constitutions. This section will also discuss how these constitutions collectively and separately affect tribal code drafting.

The Constitution is considered the supreme law of the land and defines the relationship between the people and the government, the government and Indian nations and the rights of citizens. The Constitution only mentions Indians three times.<sup>9</sup> The first reference is to Congress' ability to regulate commerce with Indian tribes.<sup>10</sup> The last two references discuss the exclusion of "Indians not taxed" from the counts of apportioning direct taxes and representatives to Congress among the states.<sup>11</sup> It is also important to note that the Constitution fails to adequately protect the collective and individual rights of Indians by not addressing the traditional, cultural and spiritual practices of Indians and their tribal nations.

Additionally, the Constitution gives the president "[the] power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."<sup>12</sup> The treaties signed between Indian tribes and the federal government are considered binding agreements between nations and, like the Constitution, are considered the supreme law of the land.<sup>13</sup> Treaties

"were signed across significantly different periods of history with incredibly divergent views of what Indigenous nations were."<sup>14</sup> As a result, the treaties executed were often times just as much detrimental as they were beneficial.

The Indian Reorganization Act (IRA) and the Oklahoma Indian Welfare Act (OIWA) enabled Oklahoma Indian tribes to rebuild their governments by "incentiviz[ing] tribes to adopt U.S.-style governments and constitutions."<sup>15</sup> "Tribes felt pressured to accept the IRA [and the OIWA] just as they had felt pressured to accept previous government policies."<sup>16</sup> The templates prepared in accordance with the IRA and OIWA contained boilerplate language that "showed little sensitivity to the diversity of Native life and attempted to impose a one-size-fits-all solution to Indian problems."<sup>17</sup> As a result, many Indian tribes have constitutions that simply mirror the Western legal system and, in turn, do not protect their rights to govern in accordance with their traditional, cultural and spiritual values. Additionally, these boilerplate tribal constitutions may subject Indian tribes to other sources of authority that may be detrimental, such as state constitutions.

Developing an understanding of the history of the Constitution, treaties and IRA tribal constitutions is critical to drafting tribal codes. By examining the Constitution, treaties and IRA tribal constitutions, the tribal practitioner is clearly defining the structure that gives the legislation life. Examining these sources prevents the tribal practitioner from drafting legislation that creates a detrimental conflict between federal and tribal governments.

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Two important bodies of judicial law that define the status of Indians and Indian tribes within our federal system are the laws surrounding a tribe's criminal and civil authority.

**Congressional authority.**

Tribes are subject to the plenary power of Congress. Plenary power means that Congress can limit, modify or eliminate any powers that tribes possess.<sup>18</sup> For the purposes of this article, an example of congressional authority limiting a tribe's inherent authority is the environmental laws passed by Congress. It is the intent of Congress and the U.S. Environmental Protection Agency (EPA) that all state, local and tribal governments participate in managing human health and environmental risks.<sup>19</sup> However, there are many restraints within environmental laws that tribes must be aware of. For example, Congress has specifically included the notorious "treatment as a state" (TAS) language in certain statutes.<sup>20</sup> TAS language authorizes the EPA "to treat eligible federally recognized Indian tribes in a similar manner as a state for implementing and managing certain environmental programs."<sup>21</sup> Other statutory provisions state that tribes shall be given "substantially" the same treatment as a state.<sup>22</sup> "The EPA has interpreted this to allow tribes to enter into cooperative agreements

and receive financial assistance."<sup>23</sup>

Some statutory provisions are silent on the role of tribes.<sup>24</sup> The EPA has interpreted this silence to authorize tribal participation.<sup>25</sup> Due to the absence and/or lack of clear federal legislation, states and Indian tribes have competed for control. It is important that the tribal practitioner understands that an effective piece of tribal legislation accounts for the limitations imposed by Congress and the competing interests of the state.

**Judicial authority.** Two important bodies of judicial law that define the status of Indians and Indian tribes within our federal system are the laws surrounding a tribe's criminal and civil authority. The criminal string of cases states that federal and tribal governments have the authority to prosecute violent crimes by or against Native Americans that happen on tribal lands,<sup>26</sup> and tribal governments have the authority to prosecute all other nonmajor crimes or crimes not falling under the Assimilative Crimes Act.<sup>27</sup> The criminal string of cases also makes clear that the state has the authority to prosecute crimes by non-Indians against non-Indians.<sup>28</sup> An anomaly in

the string of criminal cases is the Supreme Court's most recent ruling in *Castro-Huerta*, which held that "state governments have the authority to prosecute certain cases on tribal lands."<sup>29</sup> When drafting criminal legislation, the tribal practitioner prioritizes the need to embody in their written laws the appropriate criminal sanctions to assure the tribe's members are protected from the many dangers they face in contemporary tribal life.<sup>30</sup> The tribal practitioner must also take into consideration that while the federal government has jurisdiction to enforce federal and sometimes state laws, a tribe may not assume that "the existence of law always means that those laws will be enforced by the federal government."<sup>31</sup>

With respect to civil authority, the Montana string of cases generally captures the limitations on a tribe's ability to regulate members and nonmembers. A tribe can exercise regulatory and adjudicatory jurisdiction over members.<sup>32</sup> A tribe must meet one of two exceptions to exercise regulatory and adjudicatory jurisdiction over nonmembers, at least where the activities at issue occur on non-member-owned fee land.<sup>33</sup> The two exceptions are: 1) A tribe may regulate when nonmembers enter consensual relationships with the tribe or its members through contracts, commercial dealings, leases or other arrangements, and 2) the nonmember's conduct "threatens or has some direct effect on the tribe's well-being, including the political integrity, the economic security, or the health or welfare of the tribe."<sup>34</sup> When drafting civil legislation, a tribal practitioner should understand that there is limited case law surrounding the

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second exception. Therefore, it is vital to incorporate language into legislation that establishes the consensual relationship between the nonmember and the tribe or its members, in addition to examples of how the nonmember's conduct threatens the tribe's well-being.

#### *Tools Needed to Bridge the Gaps*

This section briefly addresses the tools needed to bridge the gaps discussed above. As with any legislation, the contents will be challenged, and the courts will render decisions on the meaning of the statutes. Judges have competing views on how to interpret the law. The two main theories of statutory interpretation are purposivism and textualism.<sup>35</sup> "Purposivists argue that courts should prioritize interpretations that advance the statute's purpose, [and] textualists maintain that judges should primarily confine their focus to the statute's text."<sup>36</sup> Regardless of the theory applied, courts are likely to face interpretive difficulties and apply a statute in ways the legislative branch may not have anticipated or intended. Therefore, it is important that tribal practitioners use the

tools judges use to gather evidence of statutory meaning when drafting legislation. "A judge's theory of statutory interpretation may influence the order in which these tools are applied and how much weight is given to each tool."<sup>37</sup> It is recommended that the tribal practitioner use the following tools in the following order: text, structure, legislative history, purpose, policy and the Indian law canons of construction. The tribal practitioner should read *Statutory Interpretation: Theories, Tools, and Trends* and *Textualism and the Indian Canons of Statutory Construction* for a further explanation of the tools discussed herein.

#### *How to Bridge the Gap Between the Four Sources of Authority*

The first step to bridging the gap between the four sources of authority is to analyze the situation that prompted legislation, its problems and its solutions while determining the tribe's traditional, cultural and spiritual values that must be incorporated into the legislation.

The second step requires the tribal practitioner to determine what inherent powers the tribe will be utilizing to assert its

jurisdiction. The tribal practitioner should also understand which key bedrock principles it plans to use and incorporate such language into the text of the legislation.

The third step is to examine the Constitution and the individual tribe's constitution to determine the power given to Indian tribes and the limitations imposed upon such powers. By examining these two constitutions, the tribal practitioner is clearly defining the framework upon which it may be built. Examining the two constitutions prevents the tribal practitioner from passing bad, unethical, unpopular laws that are against the tribal and federal governments' values. When examining the two constitutions, tribal practitioners are encouraged to consider the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). If the tribe's constitution does not include the rights of Indigenous people to enjoy their cultures, customs, religions and rights to pursue economic, social and cultural development, then the tribal practitioner should advocate for the adoption of the tribe's version of the UNDRIP or consider implementing aspects of the UNDRIP into the tribe's constitution. If it is not feasible for the tribe to adopt its own UNDRIP or implement aspects of the UNDRIP into the tribal constitution, then the tribal practitioner should consider ways to implement the language of the UNDRIP into its laws.

The fourth step is to determine what federal legislation, if any, limits the powers of Indian tribes. The tribal practitioner should clearly identify the absence and/or lack of clear federal legislation and the areas in which the state is competing for control. A clear



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understanding of this balance allows the tribal practitioner to draft language that accounts for any limitations imposed by Congress and eliminates any competing state interests.

The fifth step is to determine what judicial body of law may limit the tribe's ability to exercise its jurisdiction. When drafting criminal legislation, the tribal practitioner should implement criminal sanctions that assure that its members are adequately protected. This may include traditional and ceremonial forms of restorative justice. Many tribal nations have developed peacemakers courts to achieve traditional restorative justice. The tribal practitioner should also consider alternative options for if the federal government chooses not to enforce its laws. When drafting civil legislation, the tribal practitioner should incorporate language that clearly defines when a consensual relationship is established between the nonmember and the tribe or one of its members. This is imperative as the inclusion of the language links a tribe's inherent authority to regulate the conduct of nonmembers within its reservation to the established judicial authority.

The sixth step requires the tribal practitioner to utilize the tools of statutory construction to effectively draft language that remedies the situation the tribe is confronted with while balancing the competing interests of the four sources of authority.

## CONCLUSION

To protect and preserve the tribe's culture, tribal practitioners must bridge the gaps between the legislation's mission or purpose and the four sources of authority.

To bridge the gaps, tribal practitioners must spend ample time learning and understanding what the tribe is trying to accomplish and then develop that mission within the bounds of the four sources of authority.

*Author's Note: This article is written in my individual capacity and is not to be construed as the opinion of the Choctaw Nation of Oklahoma.*

## ABOUT THE AUTHOR



Chloe M. Moyer is from Idabel and a proud citizen of the Choctaw Nation of Oklahoma. She received her Bachelor of Business Administration (accounting) from Northeastern State University in 2018 and her J.D. from the OCU School of Law in 2021. She currently serves as a government attorney for the Choctaw Nation of Oklahoma. Ms. Moyer is also a proud board member of the Chahta Foundation and enjoys serving her Native community.

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32. See generally *Montana v. United States*, 450 U.S. 544 (1981).
33. *Id.*
34. *Id.*
35. See *Statutory Interpretation: Theories, Tools, and Trends*, Congressional Research Service, 1 (updated March 10, 2023), <https://bit.ly/48v4Jk>.
36. *Id.*
37. *Id.*

# Fractionation or Consolidation? The Land Buy-Back Program for Tribal Nations (2012-2022)

By *Conor P. Cleary*

**O**N NOV. 22, 2022, THE LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS (LBBP) came to an end. Authorized by Congress as part of the settlement of the *Cobell v. Salazar* litigation, the LBBP included a \$1.9 billion fund that was used to purchase small fractional interests in trust or restricted allotments owned by individual tribal members and consolidate those purchased interests into tribal ownership.

“Fractionation” is the undivided ownership of small interests by multiple co-owners in a single tract of land. Without adequate estate planning, the number of ownership interests increases exponentially with each successive generation as more co-owners inherit increasingly smaller interests in the land. Fractionation impairs efficient land use and resultingly decreases the value of the property. Consolidating and aggregating small fractional interests of multiple owners into a single tribe centralizes decision-making regarding the property, thereby increasing its usability and enhancing its economic value.

Over the course of a decade, the LBBP paid \$1.69 billion to individual landowners and increased tribal ownership in more than 50,000 tracts of allotted

land, including nearly 2,000 tracts in which the tribe now owns the entire interest.<sup>1</sup> Tribes are now able to use these properties for a variety of purposes that promote tribal sovereignty and economic development. The LBBP represents the federal government’s most successful land consolidation initiative after the U.S. Supreme Court greatly limited the effectiveness of previous efforts. Without a sustained commitment to reducing fractionation in Indian Country, however, it is estimated that the number of fractionated interests will return to pre-LBBP levels by 2038.<sup>2</sup>

This article explains the genesis of the fractionation problem in Indian Country, the negative effects of fractionation, early efforts to address the issue and the creation and design of the LBBP. It concludes with some practical pointers for

attorneys when advising clients about mitigating the effects of fractionation.

## ALLOTMENT

The history of federal Indian policy is often described as occurring in distinct phases or eras.<sup>3</sup> Perhaps the most significant of these – in terms of the impact it had on Indian tribes as well as its enduring effects in the present – was the “allotment era.”<sup>4</sup> After the Civil War, westward expansion accelerated, creating greater demand for expansive swaths of Indian land that only half a century before had been promised to Indian tribes in perpetuity in exchange for removal from the eastern United States.<sup>5</sup> “Starting in the 1880s, Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned

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by individual tribe members.<sup>6</sup> There were varying motivations for the allotment policy, but the central animating features were a desire to assimilate Indian tribes and peoples to Western norms and institutions and to free Indian land for non-Indian settlement.<sup>7</sup> “[A]dvocates of the policy believed that individual ownership of property would turn the Indians from a savage, primitive, tribal way of life to a settled, agrarian, and civilized one.”<sup>8</sup> “[W]ith lands in individual hands and (eventually) freely alienable, white settlers would have more space of their own.”<sup>9</sup>

The allotment policy proved disastrous for Indian tribes and tribal members. Almost immediately, approximately 60 million acres of “surplus land” left after individual tribal members received their allotments were opened to non-Indian settlement.<sup>10</sup> An additional 27 million acres passed into non-Indian hands through the

removal of restrictions on the alienation of allotments.<sup>11</sup> The removal of these restrictions freed the allotments from federal supervision and also subjected them to state taxation.<sup>12</sup> Subsequently, “[t]housands of Indian owners disposed of their lands by voluntary or fraudulent sales; many others lost their lands at sheriffs’ sales for nonpayment of taxes or other liens.”<sup>13</sup>

Recognizing the deleterious effects allotment had on Indian tribes and their lands, Congress repudiated the policy in 1934 with the passage of the Indian Reorganization Act.<sup>14</sup> The first section of the act provided that “hereafter no land of any Indian reservation ... shall be allotted in severalty to any Indian.”<sup>15</sup> It extended the trust period of allotments indefinitely and restored any unsold surplus lands to tribal ownership.<sup>16</sup> It authorized tribes to reorganize through the adoption of constitutions and bylaws and charters

of incorporation.<sup>17</sup> It facilitated the rebuilding of tribal land bases by authorizing the purchase of lands for tribes to be held in trust for their benefit by the United States.<sup>18</sup> Despite these advances, however, “Congress made no attempt to undo the dramatic effects of the allotment years on the ownership of former Indian lands.”<sup>19</sup>

### FRACTIONATION

Allotment was not only harmful because of the literal loss of land. Even for those allotments that remained – and continue to remain – in Indian hands, the policy nevertheless has resulted in “constructive dispossession”<sup>20</sup> through the fractionation of ownership of allotted lands. Indian families may continue to own their allotments, but because that ownership often is shared among hundreds if not thousands of co-owners, “the result on the ground is realistic deprivation of

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any of the other potential benefits of that land ownership.”<sup>21</sup> In this way, “the legacy of allotment”<sup>22</sup> endures despite the formal end of the policy in 1934.

A simple example illustrates the problem of fractionation. Most allotments in Oklahoma were issued around 1900. If the recipient of the allotment – the “allottee” – had three children, and each child had three children of their own and so on, within six generations (approximately 120 years or roughly the present day), there would be 243 heirs and potential co-owners. If you increase the average to four children, within six generations there would be over 1,000 heirs and potential co-owners today.

The sheer number of co-owners “prevents efficient use of the property [and] impedes individual and community economic development.”<sup>23</sup> Title to the property is often unclear because there is little incentive to probate an estate with such a small ownership interest. Without a clear title, many prospective purchasers or lessees view transactions involving the land as too risky. Moreover, under federal regulations governing the leasing of allotted lands, no lease may be granted on a highly fractionated tract unless 50% of the co-owners consent.<sup>24</sup> With so many co-owners, it is often time-consuming to locate and obtain the consent of the requisite number of owners, a factor that may dissuade potential lessees from pursuing the transaction. Often, the value of the transaction is simply not worth the administrative hurdle for both the lessee and the owners. For example, the U.S. Supreme Court recounted an instance where a tract of land producing \$1,080 in annual income had 439 owners, none of whom

received more than \$1 in annual rent.<sup>25</sup> This property is extremely difficult to lease because, on one hand, it is inherently challenging for the lessee to obtain consent from hundreds of co-owners, and on the other hand, the owners have very little incentive to agree since they stand to receive so little benefit. The unfortunate reality is that many allotments remain entirely unproductive for these reasons.

### EARLY EFFORTS TO ADDRESS FRACTIONATION

Even during the allotment era, the federal government began to realize the problem of fractionation.<sup>26</sup> By the 1960s, fractionation was the subject of hearings and studies by the U.S. Congress.<sup>27</sup> In 1983, Congress passed the Indian Land Consolidation Act (ILCA). Among other things, the ILCA tried to reduce fractionation by mandating the escheat of very small fractional interests back to tribes upon the death of the owner.<sup>28</sup> The original version of the ILCA provided that a fractional interest of 2% or less of the total acreage of the allotment that had earned its owner less than \$100 in the preceding year would not descend by intestacy or devise to the owner’s heirs but would instead escheat to the tribe.

The U.S. Supreme Court struck down this provision of the ILCA as an unconstitutional taking without just compensation.<sup>29</sup> It found the restriction on the ability to freely pass the property interests to one’s heirs “extraordinary.”<sup>30</sup> Congress amended the law in 1984 to try to cure these deficiencies, but the Supreme Court struck down the amended version of the ILCA for the same reasons in 1997.<sup>31</sup>

### THE LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS

In *Babbitt v. Youpee*, the Supreme Court observed that although forced escheat of small fractional property interests violated the Constitution, the government was free to “pursue other options to achieve consolidation including Government purchase of the land.”<sup>32</sup> Congress followed this advice in authorizing the LBBP.<sup>33</sup> The LBBP was part of the settlement of the *Cobell v. Salazar* litigation. Congress appropriated \$1.9 billion for a land consolidation fund for the purchase of fractional interests in trust or restricted allotments. Owners had to be paid the fair market value of their fractional interests.

By all accounts, the LBBP was a resounding success. Although up to 15% of the fund could be spent on administrative and implementation costs, less than 8% was spent, freeing up more than \$135 million for the purchase of additional fractional interests.<sup>34</sup> More than 1 million fractional interests were consolidated, comprising about 2.9 million acres.<sup>35</sup> Tribal ownership increased in more than 50,000 different tracts, and the number of tracts in which tribes now own a majority interest increased by approximately 100%.<sup>36</sup> More than 123,000 willing sellers received \$1.69 billion in total payments.<sup>37</sup>

Despite the overwhelming success of the program, there were shortcomings. Most fundamentally, the \$1.9 billion that Congress authorized was not sufficient to comprehensively address the fractionation problem. The LBBP “was unable to implement land purchases at 63 percent of the approximately 150 unique locations with fractionated land, involving nearly

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100 Tribes.”<sup>38</sup> Not surprisingly, fractionation continued to increase on reservations not included in the LBBP, including a 283% increase on the Cherokee Reservation and a 63% increase on the Muscogee (Creek) Reservation.<sup>39</sup> Without further consolidation efforts, the number of fractional interests will return to pre-program levels within 15 years.<sup>40</sup>

## **PRACTICAL TIPS FOR ATTORNEYS**

Attorneys in Oklahoma can play a productive role in mitigating the effects and expansion of fractionation. First, practitioners should familiarize themselves with the various laws governing the alienation and descent of interests in restricted and trust allotments.<sup>41</sup> This includes probate codes enacted by tribes as allowed by the ILCA. One set of rules may apply to certain tribes while another set applies to others.<sup>42</sup> Failure to follow the applicable law can defeat the intent of Indian owners and result in a clouded title or property passing through intestacy rather than according to an invalid will or trust.<sup>43</sup> Second, attorneys who represent clients owning interests in trust or restricted allotments should counsel their clients on the effects of fractionation. When these effects are fully understood, owners may pursue a different approach than originally contemplated. Third, attorneys can offer constructive solutions to avoid the worst effects of fractionation. For example, estate planning attorneys may recommend distributing interests in restricted or trust allotments by will to a single heir while providing other property in the estate to other heirs. In certain circumstances, restricted or trust property



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may be placed in a trust approved by the secretary of the interior.<sup>44</sup> A real estate attorney might suggest partitioning a trust or restricted allotment so that each heir receives their own discrete tract of property rather than sharing the larger property with several co-owners. There is no shortage of creative solutions, but many of those solutions will not be apparent to attorneys unless they understand the origins and effects of fractionation and the legal options available to curb its worst excesses.

## CONCLUSION

The Land Buy-Back Program for Tribal Nations successfully reduced fractionation in Indian Country during its decade-long existence. Now that the program has expired, however, fractionation is projected to return to pre-program levels within 15 years. Attorneys can play a role in avoiding further fractionation by providing clients owning interests in trust or restricted allotments creative estate planning and real estate advice that encourages consolidation rather than fractionation.

*Author's Note: The views expressed are those of Mr. Cleary and do not necessarily represent the views of the Department of the Interior or the United States government.*

## ABOUT THE AUTHOR



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## ENDNOTES

1. Land Buy-Back Program for Tribal Nations, *Ten Years of Restoring Land and Building Trust: 2012-2022* at 1, available at <https://bit.ly/48OTi6i> (last accessed Jan. 3, 2024) (hereafter, *Final Report*).
2. *Id.*
3. See, e.g., F. Cohen, *Handbook of Federal Indian Law* §1.01 at 7-8 (Nell Jessup Newton ed. (2012)) (classifying the “eras of Native policy” into “six time frames”:[ ] “(1) Post-Contact and Pre-Constitutional Development (1492-1789); (2) The Formative Years (1789-1871), (3) Allotment and Assimilation (1871-1928), (4) Indian Reorganization (1928-1942); (5) Termination (1943-1961); and (6) Self-Determination and Self-Governance (1961-present).”
4. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2463 (2020).
5. See H. Craig Miner, *The Corporation and the Indian* (1989).
6. *McGirt*, 140 S. Ct. at 2463 (citation omitted).
7. See Judith Royster, “The Legacy of Allotment,” 27 *Ariz. St. L. J.* 1, 9 (1995).
8. *Id.*
9. *McGirt*, 140 S. Ct. at 2463 (citing F. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920*, at 14-15 (2001)).
10. Royster, *supra* note 7, at 13.
11. See *id.* at 10-12. Removal of restrictions could occur through the expiration of a certain “trust period” (often, 25 years) or through the issuance of a so-called “fee patent” that unilaterally and automatically removed the restrictions. See *id.*
12. See generally Conor Cleary, “The Stigler Act Amendments of 2018,” 91 *OBJ* 50 (2020).
13. Royster, *supra* note 7, at 12 (footnote omitted).
14. Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§5101-5129).
15. *Id.*, §1, 25 U.S.C. §5101.
16. *Id.*, §§2, 3, 25 U.S.C. §§5102, 5103(a).
17. *Id.*, §§16, 17, 25 U.S.C. §§5123(a), 5124.
18. *Id.*, §5, 25 U.S.C. §5108.
19. *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 255 (1992).
20. Jessica Shoemaker, “Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem,” 2003 *Wis. L. Rev.* 729, 730 (footnote omitted).
21. *Id.*
22. See Royster, *supra* note 7.
23. Shoemaker, *supra* note 20, at 731.
24. See 25 C.F.R. §162.012(a). A highly fractionated tract is one with 20 or more owners. *Id.*
25. See *Hodel v. Irving*, 481 U.S. 704, 712-13 (1987).
26. See Shoemaker, *supra* note 20, at 730 n.7 (quoting Kenneth H. Bobroff, “Retelling Allotment: Indian Property Rights and the Myth of Common Ownership,” 54 *Vand. L. Rev.* 1559, 1616 (2001) (“As early as 1892, Indian Agents were reporting problems of fractionated heirship.”)).
27. *Id.* at 744-45 (citing Comm. on Interior and Insular Affairs, 86th Cong., Indian Heirship Land Study 27 (Comm. Print 1960); Indian Fractionated Land Problems: Hearings on H.R. 11113 Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 89th Cong. 6, 31-32, 35 (1966)).
28. Escheat is “a reversion of property to the state in consequence of a want of any individual competent to inherit.” Escheat definition, *Black’s Law Dictionary* (2d ed. 1910), available at [thelawdictionary.org](http://thelawdictionary.org) (last accessed Jan. 6, 2024).

29. See *Hodel v. Irving*, 481 U.S. 704 (1987).
30. *Id.* at 716.
31. See *Babbitt v. Youpee*, 519 U.S. 234 (1997).
32. *Id.* at 242 (quoting *Youpee v. Babbitt*, 67 F.3d 194, 200 (9th Cir. 1995)).
33. See Claims Resolution Act of 2010, P.L. 111-291, 124 Stat. 3064, 3066-70 (Dec. 8, 2010).
34. Report at 10.
35. *Id.* at 24.
36. *Id.* at 27.
37. *Id.* at 26.
38. *Id.* at 44.
39. *Id.*
40. *Id.* at 50.
41. See, generally, Conor Cleary, “The Stigler Act Amendments of 2018,” 91 *OBJ* 50 (January 2020); Casey Ross-Petherick, “Estate Planning for Indian Land in Oklahoma: A Practitioner’s Guide,” 84 *OBJ* 1027 (May 2013).
42. See Casey Ross, “Probate of American Indian Trust Property: The Lawyer’s Role,” 87 *OBJ* 287 (February 2016). For example, estates of Five Tribes and Osage members containing interests in restricted allotments are probated in Oklahoma state court while estates containing interests in trust allotments are probated administratively through the Department of the Interior. See *id.*; see also Act of Aug. 4, 1947, chap. 458, §3(a), 61 Stat. 731 (estates containing Five Tribes restricted allotments); 43 C.F.R. Part 30 (probate of estates containing trust allotments).
43. See Casey Ross-Petherick, *supra* note 41, at 1027 (“As a result of this individualist approach employed by the federal government in crafting its American Indian policy, practitioners must understand the general rules of federal Indian law, but must also look for deviations that are tribe-specific.”).
44. See, e.g., Act of October 21, 1978, Pub.L. No. 95-496, §6, 92 Stat. 1660 (Osage trusts); Act of Jan. 27, 1933, chap. 23, §2, 47 Stat. 777 (Five Tribes trusts).



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# Examining the Implications of *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*

## How are Tribal Business Enterprises Impacted Under the Bankruptcy Code?

By Mark A. Craige, Logan Hibbs and Michael McBride III

**O**VER THE PAST TWO DECADES, bankruptcy courts and federal circuits have disagreed on whether the Bankruptcy Code waives tribal sovereign immunity and makes tribes subject to the code's provisions. But in June 2023, the Supreme Court answered this question in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*,<sup>1</sup> which held that tribes are "governmental units" whose immunity is waived under §§101(27)<sup>2</sup> and 106(a)(1)<sup>3</sup> in the Bankruptcy Code. Therefore, tribes are now subject to certain provisions of the code.

However, in holding that tribes are "governmental units," a few issues remain unclear, the most pressing of which is how tribally owned businesses – which are often considered an "arm of the tribe" – are impacted. Importantly, the Bankruptcy Code expressly excludes "governmental units" from being able to file for bankruptcy.<sup>4</sup> So does *Coughlin's* holding that "tribes" are "governmental units" mean that tribal businesses are also unable to file for bankruptcy?

This article seeks to analyze this question and examine how *Coughlin* exposes the inadequacies of the Bankruptcy Code when it comes to tribal businesses. To do

so, part I of this article will provide a general overview of tribal sovereignty, tribal immunity and the "arm of the tribe" analysis. Part II will analyze the key issues leading up to *Coughlin* and will highlight the core reasoning for *Coughlin's* holding. Finally, part III will outline the implications of *Coughlin* for tribal governments and enterprises as creditors and debtors.

### PART I: GENERAL OVERVIEW OF TRIBAL SOVEREIGNTY, TRIBAL IMMUNITY AND "ARMS OF THE TRIBE"

Indian tribes are considered North America's first nations, and because their nationhood predates

the United States, their sovereignty is derived from their original powers of self-government – not the United States Constitution.<sup>5</sup> As a result, even though tribes have since agreed in treaties to the paramount authority of the United States, federal courts still recognize that Indian tribes are distinct political sovereigns that have inherent authority to govern their own citizens, create their own laws and – relevant here – enter into commercial contracts with non-tribal private parties and organize their own business entities under state or tribal law.<sup>6</sup>

Importantly, however, Congress has the "plenary and exclusive"

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power to “enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority.”<sup>7</sup> Pursuant to this power, it has imposed sweeping abrogations of tribal sovereignty, including restricting the ability of tribes to prosecute major crimes on their lands, forcing tribes to enter into state compacts to conduct Class III gaming within the state and even fully terminating tribal governments.<sup>8</sup> But although the Supreme Court has upheld congressional abrogation of tribal sovereignty, it will not “lightly assume that Congress ... intends to undermine Indian self-government.”<sup>9</sup> Instead, to find congressional abrogation of tribal sovereignty, the Supreme Court requires a clear, unequivocal intent from Congress.<sup>10</sup>

The Supreme Court has similarly held that *tribal sovereign immunity* – which generally protects tribal governments and tribal entities from lawsuits against private individuals and states – will also

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not be abrogated unless 1) Congress clearly and unequivocally abrogates that immunity or 2) the tribe clearly waives its immunity.<sup>11</sup> But although the Supreme Court has ruled that tribal sovereign immunity extends to a tribal *government's* commercial activities in and outside of Indian Country,<sup>12</sup> the court has said very little on whether lower courts should treat a tribally owned business as a distinct entity or whether it should be considered part of the tribe – and, thus, entitled to the tribe's sovereign immunity.

Because the Supreme Court has been relatively silent on this topic, Oklahoma courts use a six-factor test created by the 10th Circuit in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort* to determine whether a tribal enterprise is an “arm of the tribe.”<sup>13</sup> Courts applying this test examine the following factors:

- 1) *The method of the entity's creation:* Facts weighing in favor of immunity include whether the entity was created under tribal law and whether the tribe's resolutions or ordinances creating the entity describe it as an “instrumentality” or “authorized agency” of the tribe.
- 2) *The entity's purpose:* Granting immunity is favored if the entity was “created for the financial benefit of the tribe and to enable it to engage in various governmental functions.”<sup>14</sup>
- 3) *The entity's structure, ownership and management:* This factor weighs in favor of immunity if the tribe has significant managerial control over the entity and wholly owns it.

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So far, only a few courts have considered whether a tribal business is an arm of the tribe in bankruptcy proceedings, and most consider this question in the context of tribal enterprises as *creditors*.

- 4) *The tribe intends for the entity to share its immunity:* If a tribe's resolutions and ordinances express that the enterprise should share the tribe's immunity, then this intent weighs in favor of granting immunity.
- 5) *The financial relationship between the tribe and entity:* This factor weighs in favor of immunity if the entity's revenue funds the tribe's “governmental functions, its support of tribal members and its search for other economic development opportunities.”<sup>15</sup>
- 6) *Whether extending immunity would “plainly promote and fund the Tribe's self-determination through revenue generation and the funding of diversified economic development.”*<sup>16</sup> It also asks if extending immunity to the entity “directly protects the sovereign tribe's treasury, which is one of the historic purposes of sovereign immunity in general.”<sup>17</sup>

So far, only a few courts have considered whether a tribal business is an arm of the tribe in bankruptcy proceedings, and most consider this question in the context of tribal enterprises as *creditors*. For example, in *Solomon v. American Web Loan*, the bankruptcy court applied the *Breakthrough* test to determine whether a payday lending company incorporated under tribal law and partially owned by the tribe was entitled to the tribe's sovereign immunity.<sup>18</sup> There, a non-Indian individual partnered with a tribe to form an online payday loan company.<sup>19</sup> Believing that it shared the tribe's sovereign immunity and that the state's interest rate caps were inapplicable, it charged customers exorbitant interest rates for payday loans. A group of debtors eventually sued in bankruptcy court, arguing that the company violated state law.<sup>20</sup>

Applying the *Breakthrough* factors, the court found that the tribe received about \$8 million in profits, compared to the tribe's non-Indian partner who earned around \$110 million.<sup>21</sup> Additionally, the court found that the non-Indian partner

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had majority control of the company's board and in the day-to-day operations.<sup>22</sup> Finally, even though the entity was created by a tribal ordinance that expressed an intent for the corporation to share the tribe's immunity, the court believed the parties' true intentions were to shield the non-Indian partner from legal liability.<sup>23</sup> For these reasons, the court held that the payday lending operation was not an arm of the tribe, and therefore, the company and the non-Indian partner could not assert sovereign immunity.<sup>24</sup>

*American Web Loan* illustrates how predatory creditors can take advantage of tribal sovereign immunity in an attempt to protect themselves from state laws. This case also provides an example of how courts apply the *Breakthrough* test to tribal enterprises as creditors. But what about when tribal enterprises enter bankruptcy proceedings as debtors?

In perhaps the only case to address this issue, creditors in *In re Santa Ysabel Resort and Casino* argued that a tribally owned casino could not file for Chapter 11 bankruptcy because it was an arm of the tribe.<sup>25</sup> In that case, the tribe's casino filed for bankruptcy after accruing more than \$50 million in debt.<sup>26</sup> Although the casino argued that it was separate from the tribe and could file for bankruptcy, several other creditors moved to dismiss the petition, citing loan documents listing the tribe as the obligor as evidence that the casino was an arm of the tribe.<sup>27</sup> Ultimately, the court sided with the creditors and dismissed the casino's bankruptcy petition without an opinion.<sup>28</sup> Consequently, the casino was unable to negotiate with its creditors and closed a few years later.<sup>29</sup>

Beyond this case, few bankruptcy courts, if any, have analyzed whether a tribal debtor is an arm of the tribe and eligible for bankruptcy protection. But, as will be discussed later, *Coughlin's* holding that "tribes" are government units will soon invite the question of whether the applicable Bankruptcy Code provisions, such as exclusion from bankruptcy protection, also apply to tribal enterprises.

## PART II: COUGHLIN'S ABROGATION OF TRIBAL SOVEREIGN IMMUNITY IN BANKRUPTCY LAW

Leading up to *Coughlin*, the 6th and 9th circuits differed on whether §106(a)(1) of the Bankruptcy Code, which abrogates the sovereign immunity of certain "governmental units," also applied to tribes. The core issue for both courts – and *Coughlin* – was whether tribes fell within the definition of a "governmental unit" in §101(27).<sup>30</sup> On one side of the split, the 9th Circuit in *Kyrstal Energy Co. v. Navajo Nation* held that §106(a)(1) abrogated tribal immunity.<sup>31</sup> Because §106(a)(1) abrogated the immunity of "all governments," including "domestic governments," the court believed this abrogation also applied to tribes as "domestic dependent nations."<sup>32</sup> And since Congress abrogated the immunity of essentially any government, the court found this sufficient to find that Congress clearly and unequivocally intended to abrogate tribal sovereign immunity as well.<sup>33</sup>

In contrast, the 6th Circuit in *In re Greektown Holdings, LLC* disagreed with the 9th Circuit and held that §106(a)(1) *did not* abrogate tribal immunity.<sup>34</sup> According to the court, listing every other sovereign – except for tribes – in §101(27) did

not constitute a clear intent to abrogate tribal immunity. Additionally, Congress knew about the Supreme Court's clear statement rule when it adopted the Bankruptcy Reform Act of 1978, yet it failed to mention tribes anywhere in the statute.<sup>35</sup> So, for these reasons, the 6th Circuit held that Congress did not abrogate tribal immunity in the Bankruptcy Code.

In June 2023, the Supreme Court finally resolved this circuit split in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*.<sup>36</sup> In *Coughlin*, the tribe owned a payday loaning operation that extended a payday loan to Mr. Coughlin.<sup>37</sup> Unable to pay his loan and other debts, Mr. Coughlin eventually filed for Chapter 13 bankruptcy, which triggered the automatic stay.<sup>38</sup> But when the tribe's payday lender tried to bypass the automatic stay by attempting to collect some of his assets, Mr. Coughlin filed a motion to enforce the stay and recover damages against the lender and the tribe.<sup>39</sup> However, the bankruptcy court dismissed Mr. Coughlin's motion based on tribal sovereign immunity, and his appeal eventually made its way to the U.S. Supreme Court.

The court ultimately sided with Mr. Coughlin and held that §106(a)(1) indeed abrogates tribal sovereign immunity. In determining whether tribes are "governmental unit[s]" under §106(a), the court emphasized the "strikingly broad scope" of the long list of governments in §101(27)'s definition, which included categories of governments ranging from the United States to municipalities, territories, foreign states and domestic governments.<sup>40</sup> According to the court, creating such a "comprehensive"

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list showed a congressional intent to “categorically abrogate[ ] the sovereign immunity of *any* governmental unit that might attempt to assert it,” regardless of its location, nature or type.<sup>41</sup> And because tribes “are indisputably governments,” they accordingly fell within the scope of §§101(27) and 106(a)(1).<sup>42</sup> Holding that tribes were exempt, the court explained, would “upend[ ] the policy choices that the code embodies” by allowing some government creditors to be immune “while others would face penalties for noncompliance.”<sup>43</sup> So, for the preceding reasons, the court held that the Bankruptcy Code waived tribal sovereign immunity.<sup>44</sup>

### PART III: IMPLICATIONS FOR TRIBES AND TRIBAL ENTERPRISES UNDER THE BANKRUPTCY CODE

Now, the rule under *Coughlin* is that the Bankruptcy Code treats federal, state and tribal governments equally concerning the

abrogation of sovereign immunity. The most obvious impact of this holding is that Indian tribes and their business enterprises can no longer assert immunity from suit in bankruptcy courts. This also means that tribes and their enterprises are subject to other provisions of the code, including alleged violations of the automatic stay under §362, the use, sale or lease of property under §363, the allowance of claims or interests under §502, turnover of property to the debtor’s estate under §542, recovery of allegedly preferential or fraudulent transfers received by tribes under §§547 and 548, and post-petition claims against the debtor in Chapter 13 cases under §1305.

However, a few issues remain unclear, the most pressing of which is whether tribal businesses can file for bankruptcy. Remember that for an entity to be able to file for bankruptcy, it must be a “debtor” under the Bankruptcy Code. A “debtor” can be a “person” – which includes individuals, partnerships,

corporations or “municipalit[ies]” – but the Bankruptcy Code says it cannot be a “governmental unit.”<sup>45</sup> However, *Coughlin* held that “tribes” – which, in that case, included the tribe’s government and the tribe’s lending company – are *governmental units* under the code. So, whether intentional or an oversight, this broad use of “tribes” exacerbates the conflict for classifying tribal businesses under the Bankruptcy Code. If tribal businesses were merely partnerships or corporations, they could file for bankruptcy protection. But if tribal businesses are also “government units,” as *Coughlin* may hold, they are likely unable to file for bankruptcy.

Ultimately, whether tribal businesses are “governmental units” essentially requires lower courts to apply the 10th Circuit’s *Breakthrough* factors to determine if the business is an “arm of the tribe.” However, this test puts tribes in a difficult position when organizing their businesses. Why? A tribe’s immunity from suit is a fundamental part of their sovereignty and economic development, so tribes will certainly want their businesses to share their immunity. But *Coughlin* now exposes a double-edged sword: Should tribes structure their enterprises so as to not resemble an “arm of the tribe” in order for those enterprises to receive bankruptcy protection? If so, this might mean organizing their businesses under state law (which may make them subject to state taxes), hiring non-tribal citizens to operate the enterprise, sharing revenue with non-tribal entities and individuals, dividing the enterprise’s ownership and possibly losing the ability to assert immunity in cases



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involving employment disputes or torts. Essentially, in exchange for bankruptcy protection, tribes would lose much of their sovereignty and control over their revenue streams.

To add another layer of difficulty, federal law often prohibits tribes from even structuring their entities in a way that makes them distinct from the tribe. For example, the Indian Gaming Regulatory Act (IGRA) mandates that tribes “have the sole proprietary interest and responsibility for the conduct of any gaming activity.”<sup>46</sup> This means that only the tribe itself can own, control and possess an Indian gaming operation, which would undoubtedly satisfy an arm of the tribe analysis. Furthermore, even if the tribe were to successfully argue that its casino was a valid debtor, the IGRA would likely require that equity interests in the casino remain with the tribe – even if the debtor’s more senior creditors were not fully repaid.<sup>47</sup> Thus, the IGRA’s propriety interest requirement would directly conflict with the absolute priority rule in Chapter 11 bankruptcy proceedings, which requires that creditors be paid in full before equity can receive anything in a bankruptcy.<sup>48</sup> So, “[e]ven if deemed eligible to file for [C]hapter 11, if a tribal debtor cannot propose a plan that conforms with absolute priority – and compliance with the IGRA likely means it cannot – it will be unable to use the bankruptcy system to restructure its debts.”<sup>49</sup> Before *Coughlin*, tribal enterprises may have been able to avoid these issues by presenting themselves as a distinct corporation or LLC. But now, *Coughlin* will put pressure on courts to consider whether those entities are truly separate from the tribe to be entitled to bankruptcy

protection. And tribes will have to decide whether that protection is worth their sovereignty.

## CONCLUSION

Ultimately, *Coughlin* did not create these issues, but it does expose how the Bankruptcy Code fails to adequately address the treatment of tribal enterprises. To gain bankruptcy protection, tribes must organize and structure their businesses so that they do not look like an “arm of the tribe.” But in doing so, they may lose sovereign immunity for those businesses in non-bankruptcy lawsuits. And even if tribes can successfully argue that their business is a valid debtor, they probably cannot satisfy the conflicting requirements of other federal laws, such as the IGRA. As a result, tribes are left with either a difficult choice to exchange their sovereignty for protection or with no protection at all for some of its most important industries.

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## ABOUT THE AUTHORS



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## ENDNOTES

1. 599 U.S. 382 (2023).  
2. 11 U.S.C. §106(a)(1) (waiving sovereign immunity for a “governmental unit” in certain provisions of the code).  
3. 11 U.S.C. §101(27) (defining “governmental unit” as “United States; State; Commonwealth; District; Territory; municipality; foreign state ... a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government”).  
4. See 11 U.S.C. §§109(a), 101(41).  
5. 1 *Cohen’s Handbook of Federal Indian Law* §4.01 (2023).  
6. See generally, *United States v. Wheeler*, 435 U.S. 313, 323-24 (1978); *Id.* §21.02.  
7. *United States v. Lara*, 541 U.S. 193, 202 (2004).  
8. See Major Crimes Act (18 U.S.C. §1153); Indian Gaming Regulatory Act (25 U.S.C. §2701); Charles F. Wilkinson and Eric R. Biggs, “The Evolution of the Termination Policy,” 5 *A. Ind. L. Rev.* 139, 151–154 (1977).  
9. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 790 (2014).  
10. *Id.*  
11. *Three Affiliated Tribes of Fort Berthold Rsv. v. Wold Eng’g*, 476 U.S. 877, 890 (1986).  
12. See *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991), (holding that the tribe was entitled to sovereign immunity after Oklahoma attempted to collect taxes on cigarettes sold by a tribally owned convenience store on tribal trust land); *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998) (holding that tribe’s sovereign immunity would not be abrogated without clear congressional intent even for commercial activity occurring off tribal lands).

13. 629 F.3d 1173 (10th Cir. 2010).  
14. *Id.* at 1192.  
15. *Id.* at 1195.  
16. *Id.*  
17. *Id.*  
18. 375 F. Supp. 3d 638, 645 (E.D. Va. 2019).  
19. *Id.* at 648-49.  
20. *Id.* at 651.  
21. *Id.* at 654.  
22. *Id.* at 655-56.  
23. *Id.* at 657.  
24. *Id.* at 660.  
25. *In re Santa Ysabel Resort and Casino*, Case No. 12-09415-PB11 (Bankr. S.D. Cal. 2012).  
26. See Laura N. Coordes, “Beyond the Bankruptcy Code: A New Statutory Bankruptcy Regime for Tribal Debtors,” 35 *Emory Bankr. Dev. J.* 363, 378 (2019).  
27. County of San Diego’s Motion to Dismiss Debtor’s Bankruptcy Case; Memorandum of Points and Authorities in Support Thereof, *In re Santa Ysabel Resort and Casino*, Case No. 12-09415-PB11 (S.D. Cal. Aug. 7, 2012). (available at <https://bit.ly/3vd7QPk>); Memorandum of Points and Authorities in Support of Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority, *In re Santa Ysabel Resort and Casino*, Case No. 12-09415-PB11 (S.D. Cal. Aug. 2, 2012) (available at <https://bit.ly/3ltHNGl>); Acting United States Trustee’s Motion to Dismiss Case, *In re Santa Ysabel Resort and Casino*, Case No. 12-09415-PB11 (S.D. Cal. Aug. 7, 2012) (available at <https://bit.ly/3V8Y2kf>).  
28. Minute Order, *In re Santa Ysabel Resort and Casino*, Case No. 12-09415-PB11 (S.D. Cal. Sept. 4, 2012), available at <https://bit.ly/3vd8axw>.  
29. See Coordes, *supra* note 26.

30. See 11 U.S.C. §101(27) (defining “governmental unit” as “United States; State; Commonwealth; District; Territory; municipality; foreign state ... a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government”).  
31. 357 F.3d 1055 (9th Cir. 2004).  
32. *Id.* at 1057 (citing *Cherokee Nation v. Georgia*, 30 U.S. 1, 13 (1831)).  
33. *Id.* at 1058.  
34. 917 F.3d 451 (6th Cir. 2019), *abrogated by Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382 (2023).  
35. For example, Congress had already expressly mentioned tribes in prior statutes, yet it made no mention of them in the Bankruptcy Code. See, e.g., Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6972(a)(1)(A), 6903(13), 6903(15) (authorizing suits against an “Indian tribe”); Safe Water Drinking Act of 1974, 42 U.S.C. §§300j-9(i)(2)(A), 300f(10), 300f(12) (authorizing suits against an “Indian tribe”).  
36. 599 U.S. 382 (2023).  
37. *Id.* at 385.  
38. *Id.*  
39. *Id.* at 386.  
40. *Id.* at 389.  
41. *Id.* at 390.  
42. *Id.* at 393.  
43. *Id.* at 391.  
44. *Id.* at 399.  
45. 11 U.S.C. §§109(a)-(c), 101(41).  
46. 25 U.S.C. §2710(b)(2)(A).  
47. See Coordes, *supra* note 26, at 382.  
48. *Id.*  
49. *Id.*



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# Farm Bill Implications in Indian Country

*By Carly Griffith Hotvedt, Kelli Case and Mallory Moore*



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## THE FARM BILL IS ONE OF THE LARGEST PIECES OF OMNIBUS LEGISLATION

passed by Congress. Farm bills are generally authorized for five years and permit programmatic and funding support for food and agriculture systems in the United States.<sup>1</sup> The Agricultural Adjustment Act of 1933 (AAA), now known as the first “farm bill,” passed in the wake of the Great Depression and was signed into law by President Franklin D. Roosevelt in order to address volatility in American agriculture markets.<sup>2</sup> The price volatility of agricultural commodities was predicated by an excess supply of some commodities and severe supply deficits of other crops and food products due in part to weather-related disasters and exacerbated due to poor production practices in conflict with good environmental and natural resources management.<sup>3</sup> However, this first farm bill did nothing to address agricultural cultivation and production practices that disrupted critical natural resources.<sup>4</sup> It also contained no provisions considering tribal agriculture, tribal producers or tribal lands.<sup>5</sup>

### DEVELOPMENT OF TRIBAL AGRICULTURE AND FOOD SYSTEMS

Only in June 1924 were U.S.-born Native Americans uniformly granted American citizenship through the Indian Citizenship Act.<sup>6</sup> Nine years after the enactment of the Indian Citizenship Act, many Native Americans were not fully enfranchised under state law and were unable to vote, secure congressional representation or consideration, or uniformly participate in the American political process that would produce the AAA in 1933.<sup>7</sup> Further compounding issues of political access, tribal

subjection to reservation and removal era policies had significantly disrupted tribal food and agriculture systems, resulting in separation from traditional food sources, burdensome influence over tribal production agriculture practices<sup>8</sup> and dependence on federal nutrition support.<sup>9</sup> Additionally, despite the congressional assertion of the encouragement of tribes to take up yeoman farming,<sup>10</sup> allotment policies in the early 1900s resulted in further divestment of tribal lands, creating a land ownership system not conducive to common tribal production agriculture practices.<sup>11</sup> Tribes

were severely underrepresented and under-considered in farm bill titles until more recently.

While tribal nutrition programs – like the Food Distribution Program on Indian Reservations (colloquially known as “commods”)<sup>12</sup> – have existed since the 1970s,<sup>13</sup> consideration of production agriculture through the lens of tribal farmers and ranchers on tribal lands wasn’t realized until the 1990 Farm Bill.<sup>14</sup> Efforts to advocate for tribal farmers and ranchers consolidated after the 1980s farm crisis when the Intertribal Agriculture Council (IAC) was formed in 1987.<sup>15</sup> IAC recognized

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# 2023 INDIAN COUNTRY FUNDING



\*SOURCE: OMB - Native American Crosscut - [https://www.whitehouse.gov/wp-content/uploads/2023/12/FY2024\\_Native\\_American\\_Funding\\_Crosscut\\_FINAL\\_508.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/12/FY2024_Native_American_Funding_Crosscut_FINAL_508.pdf)

\*\*Does not include FY 2023 Disaster Relief Supplemental Funding, BIL, and IRA Funding, and FY 2024 Advanced Appropriation

Graphic by the Indigenous Food and Agriculture Initiative

that tribes and tribal producers were frequently underserved by U.S. Department of Agriculture (USDA) programs, which are created and authorized through farm bill measures.<sup>16</sup> As a result of IAC's efforts, the 1990 Farm Bill directed the secretary of Agriculture to consult with IAC in the development of reservation-based extension education programs intended to support local needs, including tribal production agriculture efforts.<sup>17</sup> In the ensuing years and subsequent farm bills, additional provisions have been added to further support tribal agriculture and food systems development.<sup>18</sup>

## 2018 FARM BILL

The most recent farm bill in 2018 reflects funding mechanisms that result in the USDA being the conduit for the second largest federal funding transfer to Indian Country. Since 2018, between \$3.6 billion to \$4 billion is annually conveyed to tribes, tribal producers, intertribal organizations

and other entities receiving and administering services and programming in support of Indian Country food and agriculture systems. Despite the funding amounts, there is currently no formal means of tribal participation and influence over USDA budget recommendations and allocations.<sup>19</sup> Therefore, legislative advocacy is critical for Indian Country to secure support for continued investment and stabilization of tribal food and agriculture systems. In 2017, IAC partnered with the National Congress of American Indians (NCAI), the Shakopee Mdewakanton Sioux Community (Shakopee) and the Indigenous Food and Agriculture Initiative (IFAI) as the policy and research partner to form the Native Farm Bill Coalition (NFBC) in the lead-up to the 2018 Farm Bill.<sup>20</sup> In contemplation of NFBC advocacy efforts, the Shakopee, through their Seeds of Native Health campaign, commissioned the IFAI to draft a report encapsulating Indian

Country's priorities for the 2018 Farm Bill. The IFAI hosted a series of roundtables to solicit input and feedback from tribes, tribal communities and tribal producers regarding the successes and challenges experienced in tribal food and agriculture efforts and any specific changes or additions to the 2018 Farm Bill.<sup>21</sup> The ensuing report, titled "Regaining Our Future," formed the foundation of NFBC advocacy and engagement, ensuring that Indian Country's priorities were uplifted to Congress and received due consideration in 2018 Farm Bill efforts.<sup>22</sup>

Due in large part to the efforts of the NFBC, the 2018 Farm Bill is the most tribally inclusive farm bill to date. Sixty-three tribally specific provisions expanded program access, improved tribal parity in treatment as a state or other authorized entity, increased technical assistance and outreach to Indian Country, improved tribal access to funding and increased sourcing and market opportunities for

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traditional and Native-produced foods. Additionally, for the first time, two opportunities for tribal self-governance were included in the farm bill: one in the Nutrition title and one in the Forestry title.

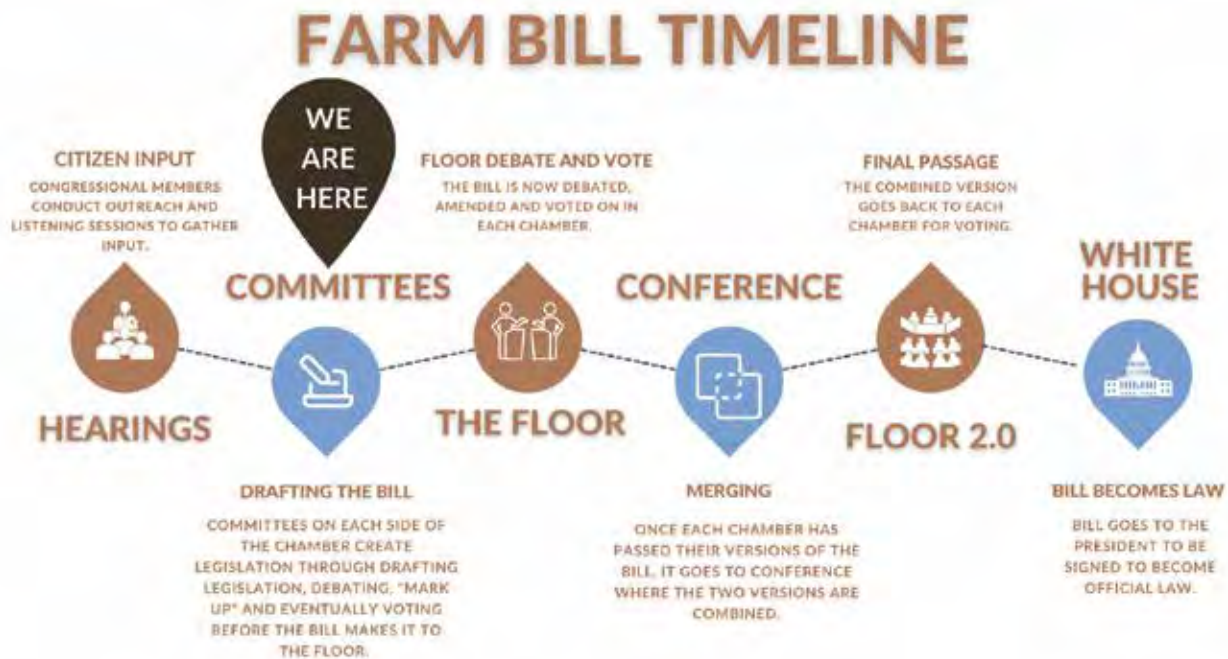
In the Nutrition title, the 2018 Farm Bill authorized a pilot project permitting the USDA to contract with tribes to perform purchasing functions under its Food Distribution Program on Indian Reservations (FDPIR).<sup>23</sup> Typically, the USDA's Agricultural Marketing Service (AMS) oversees procurement for the FDPIR and sources food products on a nationwide basis to supply the program. Nationwide sourcing creates significant difficulty in providing culturally and traditionally relevant and metabolically appropriate foods on a regional or even tribally specific basis for tribal program service recipients and in the ability of smaller-scale producers, like the majority of tribal farmers, to meet the volume demands of AMS procurement solicitations. The pilot, as introduced, begins to address these

challenges. Participating tribes and intertribal organizations (ITOs) can choose to supplant items in the food package and procure alternatives themselves rather than relying on the AMS. Participating ITOs report resounding success. Tribes are incorporating traditional and cultural foods relevant to their tribe, seeing higher take rates of tribally procured foods among their participants and experiencing more engagement with the program. While not required by statute, tribes are by and large choosing to source from Indigenous and local producers, supporting economic development in their communities.<sup>24</sup> After two rounds of funding appropriations, 16 tribes and ITOs are participating in the pilot.<sup>25</sup>

Congress also conferred self-determination authority as a demonstration project under the Tribal Forest Protection Act (TFPA) for the first time in the 2018 Farm Bill.<sup>26</sup> The TFPA authorizes the secretaries of Agriculture and the Interior to give special consideration to tribally proposed projects on agency-managed land to protect Indian trust lands

and resources from threats, such as fire, insects and disease.<sup>27</sup> Tribes may propose a TFPA project on agency-managed land that borders or is adjacent to trust land under certain enumerated circumstances.<sup>28</sup> Through the demonstration project, tribes can also contract to perform administrative, management and other functions of programs of the TFPA.<sup>29</sup> Participation in the forestry self-governance opportunity has been limited as, unlike the FDPIR pilot, there is no additional funding support available for tribes self-contracting to administer TFPA program functions.<sup>30</sup>

Under a typical five-year farm bill schedule, a new farm bill would be approved by Congress and signed into law before the expiration of the current farm bill.<sup>31</sup> However, the 2018 Farm Bill expired in September 2023.<sup>32</sup> While congressional agriculture committees have started the public hearing process,<sup>33</sup> issued solicitation from constituents and agriculture groups<sup>34</sup> and submitted marker bills for committee consideration, the process to draft and pass a new farm bill has stagnated.<sup>35</sup> While farm



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bills generally pass in a bipartisan fashion,<sup>36</sup> a divided Congress with a Democratic-led Senate and a Republican-led House with thin majority margins has encountered difficulty in coalescing around farm bill renewal due to a focus on other priority matters and broader legislative dysfunction.<sup>37</sup> Congress was able to pass a one-year extension (through September 2024) with continued authorization for 2018 Farm Bill programs prior to expiration, which was signed into law by President Biden in November 2023.<sup>38</sup> However, funding support for farm bill programs has only continued on shorter-term bases, requiring Congress to repeatedly revisit appropriations in early 2024.<sup>39</sup> In order to avoid a government shutdown impacting farm bill program operations generally, Congress will need to pass additional appropriations on or before those short-term funding expiration dates.

In anticipation of the expiration of the 2018 Farm Bill, the NFBC renewed its efforts in 2022, again hosting a series of roundtables across Indian Country. The IFAI sourced the information shared

by Native producers and tribal governments at these roundtables to draft an updated report on Indian Country's farm bill priorities, titled "Gaining Ground."<sup>40</sup> "Gaining Ground" reflects new and renewed priorities set by Indian Country for the next farm bill across all 12 titles.<sup>41</sup> Many of those priorities – including issues related to conservation, rural development, economic development, self-governance, access to credit and nutrition – are already gaining traction in Congress as evidenced by sponsored marker bills.<sup>42</sup> Marker bills are not intended to pass as stand-alone legislation. Instead, popular marker bills, in sum or part, are collected for inclusion in broader omnibus legislation, like the farm bill. Highlights of marker bills aligning with NFBC priorities are reflected below.<sup>43</sup> For the most up-to-date information about farm bill marker bills related to Indian Country, please see the Indigenous Food and Agriculture Initiative's Marker Bill Tracker at <https://bit.ly/3TcaZXU>.

*S.1780, Promoting Regulatory Independence, Mastery, and Expansion (PRIME) for Meat Processing Act*  
Recognizes the shortage of USDA-certified food inspectors throughout the country and seeks to amend the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), allowing tribes to enter into self-governance contracts with the USDA's Food Safety and Inspection Service for meat processing inspection.

*S. 697/H.R. 1450, Treating Tribes and Counties as Good Neighbors Act*  
Revises the Good Neighbor Authority (management or co-management authority on federal forest lands) program to allow tribes to retain revenue from timber sales pursuant to a Good Neighbor Agreement with the USDA or the Department of the Interior and use those funds for authorized restoration projects on non-federal lands.

*S. 2489, FDPIR Tribal Food Sovereignty Act of 2023*  
Amends the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA),

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authorizing the secretary of Agriculture to enter into self-determination contracts with tribes and tribal organizations to carry out the Food Distribution Program on Indian reservations and to provide related technical assistance.

*S. 1998/H.R. 5503, Tribal Conservation Priorities Inclusion Act*

Includes tribes in parity with states, allowing tribes to determine priority resource concerns on tribal lands. Creates an opportunity for more direct funding support for tribally determined natural resource priorities and related practices.

*S. 1580/H.R. 3595, MORE USDA Grants Act*

Improves the process for awarding grants under certain USDA programs to high-density public land counties (populations under 100,000 and over 50% of land owned/managed by the federal government) and to tribal governments in those counties; reduces matching grant fund requirements by 50%.

*S. 2340/H.R. 3955, Increasing Land Access, Security, and Opportunities Act*

Expands upon the Increasing Land, Capital, and Market Access Program created by the 2018 Farm Bill to support underserved producers. Authorizes grants and cooperative agreements with tribal governments, among others, to strengthen land, capital and market access for historically underserved farmers, ranchers and forest owners and producers operating in high-poverty areas.

*S. 3270/H.R. 5113, REACH Our Tribes Act*

Requires the USDA to consult with tribal governments on the annual budget, farm bill and other priorities, streamline applications for economic development programs and publish a comprehensive repository of economic development programs available to tribes and tribal entities.

### CONCLUSION

The funding implications and opportunities for tribal rural economic development, conservation, food and nutrition programming and self-determination are critical components of farm bill legislation. Congressional farm bill efforts may be unpredictable over the current session and into the 2024 election cycle. Advocacy groups, like the Native Farm Bill Coalition, will continue to monitor developments and share action alerts with stakeholders in Indian Country for engagement opportunities. Tribal participation is the key to ensuring access and inclusion for tribal governments, tribal farmers and ranchers and tribal citizens in the next iteration of the farm bill, whether that be a farm bill passed in 2024, 2025 or beyond.

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### ENDNOTES

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2. Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. L. 31 (Originally cited as ch. 25, 48 Stat. 31); Sidonie Devarenne and Bailey DeSimone, "History of the United States Farm Bill," Library of Congress, Accessed Jan. 14, 2024, <https://bit.ly/4a8hQs9>.
3. The best example of production practices conflicting with the natural ecosystem is row crop production in western Oklahoma in the early 1900s. Farmers plowed the grassland prairie to turn up nutrients in support of wheat, corn and other grain crop production, disrupting the root systems of native plants – like bluestem, switchgrass, buffalograss and blue grama – that held moisture and retained nutrients in the soil. Loss of anchor root systems resulted in topsoil erosion and blowing sand, culminating in the Dust Bowl. Instead of discontinuing ecologically unsound production practices, farmers tilled deeper to turn up more nutrient-rich soil, only exacerbating the effects. These practices, in conjunction with westward settler movements, solidified the eradication of bison by eliminating habitat and food sources and disrupting the symbiotic cycle of bison and prairie grasslands. "The Dust Bowl," National Drought Mitigation Center, University of Nebraska, accessed

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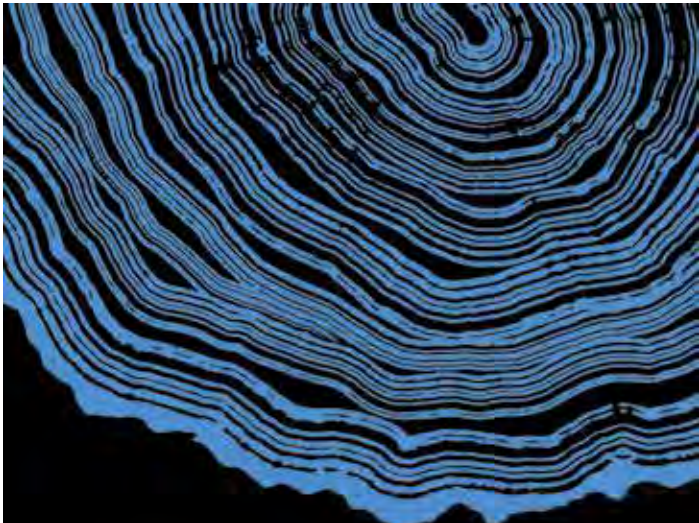
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## MANDATORY CONTINUING LEGAL EDUCATION CHANGES

### OK MCLE RULE 7, REGULATION 3.6

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



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# The Model Tribal Energy Code: Energy Sovereignty for Native American Nations

By Dr. Greg Guedel and Philip H. Viles Jr.

**T**HE TRIBAL ENERGY CONSORTIUM, a Native American-led nonprofit organization, has created the first Model Tribal Energy Code for the self-governance of energy resources by Native American nations.<sup>1</sup> Developed in partnership with tribal governments, tribal energy enterprises and tribal law experts throughout the United States, the Model Tribal Energy Code provides a starting point for Native American nations to create a comprehensive, “best-of-all-worlds” set of tribal energy laws to establish self-governance over energy development and distribution within their jurisdictions.

The Model Tribal Energy Code provides Native American Nations with:

- 1) A full legal code for tribal self-regulation of energy development activities;
- 2) Legal terms that are recognized and accepted by the industry and the federal government, enabling tribes to assume direct control of energy resources and policies within their jurisdictions;
- 3) Provisions that operationalize Native American sovereignty and replace state and federal control over tribal resources; and

- 4) Streamlined procedures and partnering opportunities to create competitive advantages for tribal economic development.

The Model Tribal Energy Code presents a pathway for the advancement of Native American energy development – from being under federal regulatory authority to sovereign tribal governance. Utilizing efficient legal procedures and the strategic application of sovereignty to create commercial advantages, the Model Tribal Energy Code offers a new approach to the management of Native American energy resources and creates new sustainable energy opportunities for the long-term benefit of tribal communities.

## TREMENDOUS RESOURCES, INADEQUATE FEDERAL MANAGEMENT

Native American lands are extraordinarily rich with mineral energy resources, such as coal, oil, gas and radioactive elements.<sup>2</sup> Tribal lands contain 30% of America’s coal reserves west of the Mississippi River, 50% of America’s uranium reserves and 20% of America’s known oil and gas deposits.<sup>3</sup> In addition to these extractive energy resources, the National Renewable Energy Laboratory has documented thousands of gigawatts of wind and solar potential present within tribal communities.<sup>4</sup> With appropriate management, Native American nations possess ample resources to not only become 100% self-sufficient

*Statements or opinions expressed in the Oklahoma Bar Journal are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff.*

in energy production, but they could readily export surplus energy for economic gain and to support American energy security.

However, the potential of Native American energy resources has not yet been realized due primarily to failures by federal agencies responsible for their development. Nearly every tribe in the United States currently has its energy resources under Bureau of Indian Affairs management, which the inspector general of the U.S. Department of the Interior has officially described as “ineffective” and “fundamentally flawed.”<sup>5</sup> As a result of inadequate management of tribal energy resources by federal agencies, only a fraction of tribal energy potential has been developed to date. Actual economic benefits to tribal communities have been disproportionately small.

#### **OPERATIONALIZING TRIBAL SOVEREIGNTY**

A clear and urgent need exists for tribal self-governance over their energy resources. The most viable approach is for Native American nations to assert their inherent sovereignty over the



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natural resources within their lands, managing the development and distribution of energy in accordance with tribal laws designed specifically to serve the needs and promote the interests of their citizens. However, for the regulation of energy, there is presently a gigantic gap in tribal laws. For over a century, federal and state governments have made a concerted and continual effort to enact and enforce energy-related laws within their jurisdictions.<sup>6</sup> In states with abundant energy resources, institutionalizing the authority of the state government over energy development is a clear priority. For example, the Oklahoma Statutes governing oil and gas development within the state are 262 pages long and comprehensively regulate all industry activities from resource ownership down to detailed operational matters, such as the hours when lights can be used on drilling rigs.<sup>7</sup> In contrast, only a handful of tribes have enacted even a fraction of the laws codified by the major energy-producing

states – and most tribes have no energy governance laws at all. The severe performance deficiencies of federal energy management noted above provide an urgent call to action for tribal governments to operationalize their sovereignty over the energy sector by enacting laws for the self-governance of their resources.

### THE MODEL TRIBAL ENERGY CODE

A necessary and fundamental institution for the governance of energy within Native American nations is the tribes' legal codes. To provide the basis for tribal governments to regulate energy-related activities within their jurisdictions, the Tribal Energy Consortium has developed the first Model Tribal Energy Code in the United States. The goal of the model code is to create a "best-of-all-worlds" set of laws that provides tribal nations with 1) a complete legal code for the regulation of traditional and emerging renewable energy development, 2) legal terms that are already

recognized and accepted by the federal government and key industry enterprises and 3) provisions that operationalize tribal sovereignty and create competitive advantages for the nation's economic development.

To achieve these objectives, the foundation of the model code synthesizes terms from existing energy codes and related regulations adopted by the federal government of the United States, the governments of the primary energy-producing states and the governments of Native American tribes with established energy development programs. These codes were selected as a starting point based on their industry-recognized terms for regulating energy development activity. By starting from these codes, the model code adopts a structure and terminology familiar to and accepted by federal government agencies and industry entities tribes may partner with to develop and distribute energy within their communities. Chapters of the Model Tribal Energy Code include:

- 100.10. Purpose and Applicability.
- 100.20. Tribal Energy Department.
- 100.30. Tribal Energy Resource Agreements.
- 100.40. Environmental and Cultural Protection.
- 100.50. Rights of Way.
- 100.60. Drilling, Excavation, and Subsurface Activities.
- 100.70. Oil, Gas, and Mineral Energy.
- 100.80. Renewable Energy.
- 100.90. Taxation.
- 100.100. Tribal Utility Commission.



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The model code is formulated to 1) recognize the sovereign authority of tribal governments and 2) enhance the efficiency and attractiveness of conducting energy development activity within the nation's jurisdiction, consistent with the nation's laws and oversight requirements. The requirements for responsible, transparent and documented actions by parties involved in energy development have been retained in the model code, but procedural matters are left to the discretion of the tribe. The tribal government is also empowered to apply its sovereign discretion to facilitate projects of particular urgency or benefit to its citizens and to require beneficial community engagement and information sharing.

### NEXT STEPS FOR TRIBAL ENERGY SOVEREIGNTY

The Tribal Energy Consortium offers the Model Tribal Energy Code to tribal governments at no cost. The code is currently being adopted by numerous tribes in Oklahoma and throughout the United States. Combined with the unprecedented level of federal grant funds and technical assistance presently available to tribes for energy projects, the opportunities for tribal energy development have never been greater. Native American nations seeking to exercise self-governance over their energy resources are encouraged to contact the authors for details on implementing the Model Tribal Energy Code to enhance their energy sovereignty.

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### ABOUT THE AUTHORS



Dr. Greg Guedel serves as legal counsel for the Tribal Energy Consortium and is the founder of Guedel Strategic Law, which serves Native American nations throughout Oklahoma and the United States. His legal practice emphasizes the representation of Native American tribes and businesses for strategic planning, risk management and economic development. Dr. Guedel may be contacted at [greg@guedellaw.com](mailto:greg@guedellaw.com).



Philip H. Viles Jr. is the first banking director for the Catawba Digital Economic Zone, the first jurisdiction created for fintech and digital asset growth in the United States. He served on the Cherokee Nation's highest court from 1976 to 2002 and as chief justice for 16 years. In 2015, he began teaching at the TU College of Law for the Master of Jurisprudence in Indian Law Program. Mr. Viles may be contacted at [pv@utulsa.edu](mailto:pv@utulsa.edu).

### ENDNOTES

1. The Tribal Energy Consortium is a 501(c)(3) nonprofit organization formed and governed by Native Americans, [www.ndnenergy.org](http://www.ndnenergy.org).
2. U.S. Dept. of Energy, Office of Indian Energy Policy and Programs, *Indian Energy Program Overview*, p.6 (2018), <https://bit.ly/49uXCc0>, accessed Oct. 19, 2023.
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4. National Renewable Energy Laboratory Technical Report NREL/TP-6A20-70807, July 2018, <https://bit.ly/3uN1VAo>, accessed Oct. 19, 2023.
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7. Oklahoma Statutes Title 52, Oil and Gas.

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# SUMMER SCHOOL IS IN SESSION

## JULY 9-12 | EMBASSY SUITES, NORMAN

For the first time in decades, the OBA Annual Meeting will be hosted in the summer, and for the first time in several years, it will be held in conjunction with the Oklahoma Judicial Conference. This year's meeting, July 9-12 at Embassy Suites in Norman, will give OBA members a chance to gather and learn in a relaxed and informal setting – and we are excited to have you join us!

The 2024 OBA Annual Meeting will be particularly meaningful this year, giving OBA members opportunities to connect with members of the state's judiciary, establish relationships and strengthen connections with colleagues, recognize our outstanding fellow lawyers with annual OBA Awards and, of course, earn top-notch CLE that will help improve your practice – with full-day tracks that will appeal to solo, small-firm and large-firm attorneys alike.

As we face many changes and a revolving door of new challenges in the legal profession, the OBA is evolving to embrace those changes. Part of this evolution involves meeting our members where they are. We hope to provide better opportunities to attend the Annual Meeting and make the educational programming as relevant and accessible to you as possible.

Save the date, and check [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting) for updates on CLE programming and registration. Come as you are, bring your families and be prepared to learn, grow and connect in a vacation-like setting. Summer School is in session, and we hope to see you there!

Miles Pringle, Oklahoma Bar Association President

**VISIT [WWW.OKBAR.ORG/ANNUALMEETING](http://WWW.OKBAR.ORG/ANNUALMEETING) FOR MORE INFORMATION**



**JULY 9 - 12 | EMBASSY SUITES | NORMAN**

# **SUMMER FUN**

## **DON'T MISS OUT ON THIS YEAR'S ANNUAL MEETING**

### **FEATURING**



**DR. KAREN KOREMATSU**  
**KEYNOTE SPEAKER, THURSDAY PLENARY**  
Founder and President, Fred T. Korematsu Institute

**THE BARRISTERS' BALL AND PRESIDENT'S RECEPTION**  
All Annual Meeting attendees are invited



### **PLUS**



**CONTINUED LEGAL EDUCATION**



**OBA AWARDS**



**ANNUAL LUNCHEON**



**SOCIAL EVENTS**



**NETWORKING OPPORTUNITIES**



**BAR BUSINESS**



**SECTION AND COMMITTEE MEETINGS**

**... AND MORE, ALL IN A RELAXED, INFORMAL SETTING, SUMMER SCHOOL IS IN SESSION!**

**REGISTRATION AND MORE EVENT INFORMATION COMING SOON**

Keep up to date with the latest Annual Meeting information at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting).

**JULY 12 | EMBASSY SUITES | NORMAN**



# ARTIFICIAL INTELLIGENCE SHAPING THE FUTURE OF LAW PRACTICE

IN CONJUNCTION WITH THE OBA ANNUAL MEETING

Be sure to join us on Friday, July 12, for a full-day conference dedicated to the impact of artificial intelligence on your law practice. Renowned speakers will discuss topics such as Using AI with your practice management system, Microsoft Copilot and other helpful AI tools for your practice, ethics of using AI in your practice and much more.

## FEATURED SPEAKERS



**JIM CALLOWAY**

Director, Management Assistance Program, Oklahoma Bar Association



**JULIE BAYS**

Practice Management Advisor, Oklahoma Bar Association



**JORDAN TURK**

Attorney and Legal Technology Advisor, Smokeball



**BEN SCHORR**

Senior Content Program Manager, Microsoft



**SEAN HARRINGTON**

Director of Technology and Innovation, OU College of Law



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Director, Donald E. Pray Law Library, OU College of Law



**CATHERINE SANDERS REACH**

Director, Center for Practice Management, North Carolina Bar Association

**DON'T MISS BEN'S MICROSOFT COPILOT DEMO!**

**AND GINA HENDRYX**

General Counsel, Oklahoma Bar Association

**REGISTRATION COMING SOON | MORE SPEAKERS AND TOPICS TO BE ANNOUNCED**

Programming is subject to change.

Keep up to date with the latest Annual Meeting information at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting).

# 2025 OBA Board of Governors Vacancies

## Nominating Petition

**Deadline: 5 p.m.**

**Wednesday, May 8**

### OFFICERS

#### President-Elect

Current: D. Kenyon Williams Jr., Sperry  
(One-year term: 2025)  
Mr. Williams automatically becomes OBA president Jan. 1, 2025.  
Nominee: **Kara Vincent, Tulsa**

#### Vice President

Current: Amber Peckio, Tulsa  
(One-year term: 2025)  
Nominee: **Richard D. White Jr., Tulsa**

### BOARD OF GOVERNORS

#### Supreme Court Judicial District 3

Current: S. Shea Bracken, Edmond Oklahoma County  
(Three-year term: 2025-2027)  
Nominee: **Vacant**

#### Supreme Court Judicial District 4

Current: Dustin E. Conner, Enid Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties  
(Three-year term: 2025-2027)  
Nominee: **Vacant**

#### Supreme Court Judicial District 5

Current: Allyson E. Dow, Norman Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties  
(Three-year term: 2025-2027)  
Nominee: **Vacant**

#### Member at Large

Current: Angela Ailles Bahm, Oklahoma City Statewide  
(Three-year term: 2025-2027)  
Nominee: **Vacant**

### SUMMARY OF NOMINATIONS RULES

Not less than 60 days prior to the annual meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the executive director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such judicial district, or one or more county bar associations within the judicial district may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the annual meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a

signed petition nominating a candidate to the office of member at large on the Board of Governors, or three or more county bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the annual meeting, 50 or more voting members of the association may file with the executive director a signed petition nominating a candidate for the office of president-elect or vice president, or three or more county bar associations may file appropriate resolutions nominating a candidate for the office.

If no one has filed for one of the vacancies, nominations to any of the above offices shall be received from the House of Delegates on a petition signed by not less than 30 delegates certified to and in attendance at the session at which the election is held.

See Article II and Article III of the OBA bylaws for complete information regarding offices, positions, nominations and election procedure.

Elections for contested positions will be held at the House of Delegates meeting July 12, during the 2024 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2024.

Nomination and resolution forms can be found at <https://bit.ly/3K2m3D2>.

## OKLAHOMA BAR ASSOCIATION NOMINATING PETITIONS

(See Article II and Article III of the OBA Bylaws)

### OFFICERS

#### **President-Elect Kara Vincent, Tulsa**

Nominating petitions have been filed nominating Kara Vincent, Tulsa, for president-elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2025. Fifty of the names thereon are set forth below:

Elizabeth Kathleen Pence, Emily Elizabeth Crain, Madelaine Ann Tack Hawkins, Deborah Ann Reed, Cynthia Jane Burlison, Carl G. Vincent Jr., Gary L. Maddux, Michael Edward Nesser, Stephanie Rickman Mitchell, Charles Robert Willing, Joe Martin Fears, Stefan Andre Mecke, Dusty Darlene Weathers, Richard Dale White Jr., Kurtis Ryan Eaton, Kelsey T. Pierce, William Todd Holman, Kara Elizabeth Pratt, Curtis Joe Shacklett, Adrienne Nichole Cash, Robert J. Bartz, Robert Lee Bearer, Arthur F. Hoge III, Braden Wesley Mason, Eric Christopher Money, Seth Aaron Day, Alexandra Albert Crawley, Jared Raye Ford, Littleton Tazewell Ellett IV, John Frederick Kempf Jr., Jonathan Lloyd Rogers, Jonathan A.

Epstein, Collin Robert Walke, Michael Hoyt Smith, Bryan Allen Fuller, John Patrick Slay, Emily Paige Pittman, Jacqueline M. McCormick, Carson Glass Lamle, Gregory Patrick Reilly, Aaron Christian Tiffit, Richard Mark Petrich, John Thomas Richer, James Craig Milton, Christopher Joe Gnaedig, Sarah Elizabeth Sadler, Heather Flynn Earnhart, Michael Terence Keester, Kristen Pence Evans and Ann Ellen Keele.

**A total of 63 signatures appear on the petitions.**

#### **Vice President Richard D. White Jr., Tulsa**

Nominating petitions have been filed nominating Richard D. White Jr., Tulsa, for vice president of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2025. Fifty of the names thereon are set forth below:

Michael Ellis Esmond, James H. Ferris, Patrick Dennis OConnor, Scott Van Brunt Morgan, Terry Michael Kollmorgen, Rodger Vaughn Curlik, Matthew Travis Williams,

James Earle Weger, Jack Lawrence Brown, John W. Cannon, Thomas Lane Vogt, Robert J. Bartz, Benjamin Rogers Hilfiger, Timothy Lee Rogers, Kara IAnne Smith, Allyson Elizabeth Dow, Shea Bracken, William Ladd Oldfield, D. Kenyon Williams Jr., John Eric Priddy, Lindsey Elizabeth Albers, Nathan Ray Floyd, Adam Taran Heavin, Frederick J. Hegenbart, M. Scott Major, Jerry Lee Zimmerman, Amber Nicole Peckio, Chad Alexander Locke, Philip D. Hixon, Ciera Nicole Freeman, Kent Randall Webb, Kenneth L. Hird, Philip Reid Feist, Carol Lynn Swenson, Brian Russell Swenson, Eric Paul Nelson, Danny Chappelle Williams, Angela Ailles Bahm, Nicholas Edwin Thurman, James Rouse Hicks, Miles Thomas Pringle, Kara Elizabeth Pratt, Adrienne Nichole Cash, Joe Martin Fears, Austin Wade Canfield, Michael Edward Nesser, Charles Robert Willing, Stephanie Rickman Mitchell, Kara Marisa Vincent and Robert Lee Bearer.

**A total of 56 signatures appear on the petitions.**

# OBA Day at the Capitol and Legislative Session Updates

By Shanda McKenney

**BY THE TIME YOU READ THIS** article, we will have completed another successful event on behalf of the OBA membership. OBA Day at the Capitol was held March 26. Those who registered and attended (this was an in-person event only!) enjoyed scheduled remarks by speakers such as Oklahoma Attorney General Gentner Drummond and Trevor Pemberton, who serves as general counsel for Gov. Stitt, among other distinguished guests. The programming was designed for the express purpose of educating the membership on current topics of discussion at the Capitol. Topics included the agendas of the various branches of our state government as well as how OBA members can be available to act as resources for the legislators on various substantive issues or to examine the practical effects of legislation under consideration from those on the front lines. Following a networking lunch, those who were able walked over to the Capitol to introduce themselves as constituents to their legislators and take in the process of floor work.

The number of bills that remain at issue this session has dwindled dramatically over the last two weeks. The committee deadlines for houses of origin passed, and the deadline for making it off the floor in the house of origin was March 14. There are a series of deadlines in the



weeks of April 8 and 15, at which point all bills must be voted out of the opposite chamber's committee in order to remain alive. The final deadline for this session is the third reading of bills from the opposite chamber, which is April 25. Pursuant to the Oklahoma Constitution, the Legislature must adjourn *sine die* from the regular session no later than 5 p.m. on May 31. Should the governor deem there to be important unfinished business following the end of the regular session, he may elect to call a special session to address any other outstanding issues.

As usual, it is anticipated that a fair percentage of April will be spent hammering out the state's

budget. The bills that were initially placed on our committee's "watch list" have been whittled down, and that summary will be posted to the Legislative Monitoring Committee's Communities page shortly. There are approximately 600 bills that are still alive and part of the legislative process this session. As a reminder, any bill that does not survive will be permanently "dead" and will not carry over to next year. However, that does not prevent the legislation from being reintroduced in 2025 if a sponsor is willing to pursue it further. If you would like to join the Legislative Monitoring Committee and have access to our Communities page, please fill out the online form at <https://bit.ly/3SjMzce>.

*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 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.

# VOLUNTEER LAWYERS NEEDED!

Law Day 2024 | Wednesday, May 1

## ASK A LAWYER STATEWIDE FREE LEGAL ADVICE

Phone banks located at the Oklahoma Bar Center in Oklahoma City, the Tulsa County Bar Association or local lawyers' offices in nonmetro counties. Volunteers may also answer questions by email.

### Oklahoma City:

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connie@okcbar.org  
www.okcbar.org/events

### Tulsa:

Dan Crawford  
918-240-7331  
lawdaytulsa@okbar.org  
or liondc@gmail.com

### Other counties:

Contact your Law Day chairperson for details. See the list of chairs at [www.okbar.org/lawday](http://www.okbar.org/lawday).



# Jenks High School Named Mock Trial State Champion



*Jenks High School's Team Courtroom Crusaders were named the Oklahoma Mock Trial state champion and will be moving on to represent our state at the National High School Mock Trial Championship in May.*



**JENKS HIGH SCHOOL'S TEAM**  
Courtroom Crusaders edged out Oklahoma City's Academy of Classical Christian Studies to claim the Oklahoma High School Mock Trial Championship. This is the second time Jenks High School has won the championship and the first time the Academy of Classical Christian Studies has made it to the final round of competition.

The Mock Trial program, now in its 44th year, involves teams of students portraying attorneys and defendants in a courtroom setting, with judges and attorneys evaluating their performance. The final round was held Tuesday, March 5, at the OU College of Law in Norman. The case the two teams argued was a fictional civil trial that examined how a social media influencer's negligent and reckless conduct and disregard for health, safety and well-being led to one follower's death.

"The program gives students a unique opportunity to develop public speaking, presentation and critical thinking skills while encouraging an interest in and an appreciation of our judicial system," said Mock Trial Committee Chair Orion Strand. "We are proud of all the students who participated in the Mock Trial competition and are excited for Jenks High School to represent Oklahoma in the national competition in Delaware in May."



*The Academy of Classical Christian Studies Team Beauty took home the second-place trophy for their performance.*

### **TEAMS, COACHES AND TEACHERS**

Jenks' Courtroom Crusaders was coached by teacher and attorney Mike Horn and assistant coaches Kody Engle, Justin McCrackin and Levi Applegate. Team members were Ester Chen, Alyssa Engle, Elaine Gao, Ann Gao, Valery Gutierrez, Adam Humphrey, Noah Markham, Whitaker McManus, Sara Moreno, Sahil Patel and Molli Thomas.

The Academy of Classical Christian Studies team was coached by attorney Jennifer Stall and teachers Anne Kirby and Chism Young.



*Elaine Gao of Jenks High School receives the Award for Best Attorney.*



*Molli Thomas of Jenks High School receives the Award for Best Witness.*

Team members were Ellie Cheng, Jack Dodson, Ethan Hoyle, George Leydorf, Isaiah Payne, Charlie Peterson, Maggie Peterson, Nick Simon, Logan Spencer and Avery Kate Thomas.

Other top finishers were third place, Jenks High School's Team Corner Tigers; fourth, Owasso High School's Team Barbie; fifth, Broken Arrow High School; sixth, McAlester High School's Team Black; seventh, McAlester High School's Team Gold; and eighth, Clinton High School.

Earning awards as best attorneys were Elaine Gao and Jack Dodson, with Molli Thomas and Maggie Peterson winning best witness honors. Matthew Livingston, with Jenks High School, won the best courtroom artist award, and Kadence Kibler, with Clinton High School, won the best courtroom journalist award.

### **MOCK TRIAL VOLUNTEERS**

The Mock Trial program is sponsored and funded by the Oklahoma Bar Foundation and the OBA Young Lawyers Division with coordination by Judy Spencer. More than 300 judges and attorneys volunteered their time to work with mock trial teams as coaches and to conduct the competitions.



*Jack Dodson of the Academy of Classical Christian Studies receives the Award for Best Attorney.*

*Presiding and Scoring Judges*  
Retired Canadian County District Judge Edward Cunningham served as presiding judge during the competition finals. Scoring judges were Oklahoma Court of Criminal Appeals Judge David B. Lewis, Oklahoma Supreme Court Justice Noma Gurich, U.S. Western District Judge Shon T. Erwin, U.S. Western District Judge Charles B. Goodwin and U.S. Western District Bankruptcy Court Judge Sarah Hall.

The judges evaluated the students based on their familiarity with the case and the formulation of their arguments. Students received points for each phase of the trial, opening, direct and cross-examination, closing argument and how well their witnesses responded. Teams were paired with volunteer attorney coaches.

#### *Mock Trial Executive Committee*

- Orion Strand, chair
- Jennifer Bruner, immediate past chair
- Kevin Cunningham, case development chair

#### *Mock Trial Committee Members*

- S. Shea Bracken
- Andrew Casey
- Christine Cave
- Andrew Medley



*Maggie Peterson of the Academy of Classical Christian Studies receives the Award for Best Witness.*



*The courtroom artist competition continued to thrive in its fifth year. The winning entry came from Matthew Livingston of Jenks High School.*

- Anthony Purinton
- Michael Nesser
- Gessica Sewell
- Carolyn Thompson, honorary Oklahoma City and Tulsa volunteer coordinator

## 2024 VOLUNTEERS

Ana Basor-Walker  
Jerry Bass\*\*  
Jeff Beeler  
Kelly Bergin  
Howard Berkson\*\*  
Scott Biggs  
Kelly Bishop  
James Bland\*  
Jerry Breathwit\*  
Aaron Bruner\*  
Greg Calvert\*\*  
John Cannon  
Mary Clements  
John Cramer  
Dan Crawford\*\*  
Sonia Cronister  
Steven Crow  
Daniel Delleumo  
John Denny\*\*  
Judge Deidre Dexter\*\*  
Kara Didier\*\*  
Stacie Dillard-Self  
Lauren Dutton  
Judge Shon Erwin\*\*\*  
Tom Ferguson  
Craig Fitzgerald\*  
Charles Geister\*\*

Aaron Goodman\*  
Alyssa Gordy-Leland  
Bradley Gungoll  
Judge David Guten \*  
Scott Hawkins\*  
Kari Hawthorn  
Dorothy Heim\*  
Shane Henry\*\*  
Virginia Henson  
Judge Stacie Hixon  
Alix Hughes\*\*  
Kelly Kavalier  
Richard Kirby  
Judge Nikki Kirkpatrick  
William Kirkpatrick  
Rick Knighton  
Erin Laine  
Danielle Layden  
Christopher Lind  
Maren Lively  
Kevin Mattax\*  
Law McMeans\*  
Judge Tim Mills\*  
Beth Muckala  
Jequita Napoli  
Drew Nichols  
Jenna Owens  
Patti Parrish

Matt Patterson  
Stu Peterson  
Mariana Pitts  
Anthony Purinton  
Autin Rabon  
Robert Redemann\*\*  
Trevor Riddle\*  
Tom Robertson  
Dana Roosa  
Erik Roscom  
Kurt Rupert  
Andrea Rust  
Scott Sampson  
Judge Mark Schwebke\*\*  
Tommy Sims  
Kelly Smakel  
Jeanne Snider  
Paiten Tayloe-Qualls\*  
Nick Thurman  
Georgenia VanTuyl\*\*  
Ron Walker\*  
Sharon Weaver\*\*  
Lucas West  
Ashley Weyland

\* Denotes volunteers who served more than once  
\*\* Denotes volunteers who served more than once  
and on different trial dates



From left scoring judges Justice Noma Gurich, Judge David B. Lewis, Judge Edward Cunningham (who served as presiding judge), Judge Charles B. Goodwin, Judge Sarah Hall and Judge Shon T. Erwin

# OBA Leadership Academy Participants Attend March Meeting Focusing on Public Service

**T**HE 16 PARTICIPANTS OF the OBA Leadership Academy have several bimonthly meetings scheduled throughout the year. Most recently, the group met March 7-8 for their meeting at the bar center. The theme of the meeting was “Public Service.”

After the conclusion of the meeting on March 7, the group attended a volunteer event held at Palomar in Oklahoma City, where they received a tour and heard about the organization’s legal network. Their next event will be held on Law Day, Wednesday, May 1, when all participants will be volunteering for Ask A Lawyer.



*Katie Dilks, executive director of the Access to Justice Foundation, discusses the status of access to justice in Oklahoma. Participants also had the opportunity to hear from Anden Bull from Palomar, Rachel Benbrook with the OSU Foundation and Judge Brett Butner, associate district judge of Seminole County.*



*Participants heard from several speakers on March 7-8 at the bar center during their second meeting. Topics included etiquette, running for office and serving on nonprofit boards. Pictured, Amy Curran with the Oklahoma Center for Nonprofits discusses special considerations for attorneys serving on a nonprofit board.*



**Top and above:** Participants volunteered at Palomar the evening of March 7 following their meeting, helping the organization write positive affirmations on the wristbands used for their clients.

**Left:** During their March meeting, attendees learned about etiquette in the legal profession led by OBA Director of Educational Programs Gigi McCormick.

A black and white portrait of a middle-aged man with short hair, wearing a suit, white shirt, and patterned tie. He is smiling slightly and looking directly at the camera. The background is a plain, light color.

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*- Scott B. Goode, Oklahoma Bar Association Member*

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# Bar Members Celebrate Membership Anniversaries

**THE OKLAHOMA BAR** Association congratulates these members who reached significant milestone anniversaries in 2024.



## OKLAHOMA COUNTY

George Tony Blankenship, *Nichols Hills*  
J. Thornton Wright, *Oklahoma City*

## ROGERS COUNTY

Jack K. Mayberry, *Claremore*

## OUT OF STATE

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Fred R. Harris, *Corrales, NM*  
Arthur Wayne Breeland, *Dallas, TX*  
David Christopher Reid, *Oakton, VA*  
Don Edward VanDall, *Cheyenne, WY*



In 1954, the Supreme Court ruled on *Brown v. Board of Education*, Ellis Island in New York closed as a point of immigration, President Dwight D. Eisenhower signed a major expansion of the nation's Social Security program into law, Swanson introduced TV dinners and *Sports Illustrated* debuted.



## BRYAN COUNTY

Thomas Owen Criswell, *Durant*

## CLEVELAND COUNTY

Theodore Price Roberts, *Norman*

## GARVIN COUNTY

Richard Benson McClain, *Pauls Valley*

## LINCOLN COUNTY

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Karl Robert Gray, *Oklahoma City*  
Robert P. Hall, *Oklahoma City*  
Theodore Paul Holshouser, *Oklahoma City*  
Robert Louis Huckaby, *Oklahoma City*  
Bob J. Leeper, *Oklahoma City*  
John William Mee, *Oklahoma City*  
D. Kent Meyers, *Oklahoma City*  
Malcome R. Oyler, *Oklahoma City*  
Hugh D. Rice, *Oklahoma City*  
Philip L. Savage, *Edmond*

Leo Harold Shaw, *Oklahoma City*  
N. Martin Stringer, *Oklahoma City*  
Mike Tesio, *Midwest City*  
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## SEMINOLE COUNTY

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Kay Elkins-Elliott, *Fort Worth, TX*





In 1964, the Civil Rights Act and the Poverty Bill (also known as the Economic Opportunity Act) were signed into law by President Lyndon B. Johnson, Dr. Martin Luther King Jr. received the Nobel Peace Prize, The Beatles made their first trip to the United States, Ford Motor Co. released the Mustang and boxer Cassius Clay won the world heavyweight championship and changed his name to Muhammad Ali.



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**MAYES COUNTY**

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*Paso Robles, CA*  
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Elsie Cox Draper, *Highlands Ranch, CO*  
Duane Leslie Brummett, *Niceville, FL*  
Larry M. Haag, *Inverness, FL*  
Mark H. Hain, *Roswell, GA*  
James, Loren Walmer, *Warsaw, IN*  
William Henry Rima, *Wichita, KS*  
Eric Doel Stinson, *Towanda, KS*  
John H. Montgomery,  
*Chevy Chase, MD*  
Stephen Hume Sturgeon,  
*Potomac, MD*  
D. Paul Tyson, *Kansas City, MO*  
Richard Fred Berger, *Las Cruces, NM*  
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Floyd Alexander Hale, *Las Vegas, NV*  
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*Charleston, SC*  
William George LaSorsa, *Bluffton, SC*  
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Randolph C. Bruton,  
*The Woodlands, TX*  
Stephen D. Colbert, *Flower Mound, TX*  
Lindil C. Fowler, *Galveston, TX*  
Ronnie Warner Fry, *Plano, TX*  
Robert Donnel Gwin, *Dallas, TX*  
Robert F. La Raia, *Houston, TX*  
James Lawrence Meyer, *Flint, TX*  
Tom W. Tannehill, *Irving, TX*  
John Ray Thompson, *Conroe, TX*  
John B. Rudolph, *Alexandria, VA*  
V. Bruce Thompson, *Alexandria, VA*  
Guy Kent Woodman, *Alexandria, VA*  
Douglas Jay Juergens, *St. Thomas, VI*  
Milbern Jay Adams,  
*Camano Island, WA*  
Virginia S. Freeman Matte,  
*Mount Vernon, WA*



In 1974, Richard Nixon became the first U.S. president to resign due to his involvement in the Watergate scandal, Stephen King published his debut novel *Carrie*, Chicago's Sears Tower became the tallest skyscraper in the world, the Rubik's Cube was invented and the Emergency Highway Energy Conservation Act was signed, which lowered all national highway speed limits to 55 mph.

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# Proposed Changes to the Oklahoma Rules of Professional Conduct

## Member Comment Requested

**THE FOLLOWING IS A MODIFICATION** to the Oklahoma Rules of Professional Conduct as proposed by the OBA Rules of Professional Conduct Committee. These proposed changes will be considered by the OBA Board of Governors. The proposed rule changes update and clarify the advertising rules.

Members of the OBA are encouraged to review the proposed changes and submit any comments by *May 1* (via email) to [proposedrulechanges@okbar.org](mailto:proposedrulechanges@okbar.org) or (via hardcopy) to ORPC Comments, OBA, P.O. Box 53036, Oklahoma City, OK 73152.

Oklahoma Rules of Professional Conduct Okla. Stat. tit. 5  
 ch. 1, app. 3-A  
 Article Information About Legal Services  
 Rule 7.1. Communications Concerning a Lawyer's Services

### RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

#### COMMENT

- [1] This Rule governs all communications about a lawyer's services, including advertising. ~~permitted by Rule 7.2:~~ Whatever means are used to make known a lawyer's services, statements about them must be truthful.
- [2] ~~Truthful statements that are Mmisleading~~ truthful statements are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.
- [3] It is misleading for a communication to provide information about a lawyer's fee without indicating the client's responsibilities for costs, if any. If the client may be responsible for costs in the absence of a recovery, a communication may not indicate that the lawyer's fee is contingent on obtaining a recovery unless the communication also discloses that the client may be responsible for court costs and expenses of litigation. See Rule 1.5(c).

- 
- [3] ~~[4] An advertisement~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with ~~the services or fees~~ those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.
- [4] ~~[5] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.~~ Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct.
- [6] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.
- [7] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.
- [8] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading.
- [9] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

**RULE 7.2 ~~ADVERTISING~~ COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES**

- (a) ~~Subject to the requirements of Rules 7.1 and 7.3, a~~ A lawyer may ~~advertise~~ communicate information regarding the lawyer's services through written, recorded or electronic communication, including public any media.
- (b) A lawyer shall not compensate, give or promise anything of value, **directly or indirectly**, to a person who is not an employee or lawyer in the same law firm for recommending the lawyer's services except that a lawyer may:
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
  - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
  - (3) pay for a law practice in accordance with Rule 1.17; **and**
  - (4) **without paying anything solely for the referral**, refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
    - (i) the reciprocal referral agreement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the agreement. **and**
  - (5) ~~give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.~~
- (c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
- (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and
  - (2) the name of the certifying organization is clearly identified in the communication.
- (~~e~~) (d) Any communication made under pursuant to this rule must shall include the name and ~~office address~~ contact information of at least one lawyer or law firm responsible for its content.

**COMMENT**

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[1] [2] This Rule permits public dissemination of information concerning a lawyer's or law firm's name, ~~or firm name~~, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

- [3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against “undignified” advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.
- [4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

## PAYING OTHERS TO RECOMMEND A LAWYER

- [2] [5] Except as permitted under paragraphs (b)(1)-(b)(4)(5), lawyers are not permitted to pay others for recommending the lawyer’s services, ~~or for channeling professional work in a manner that violates Rule 7.3.~~ A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible “recommendations”.
- [3] Paragraph (b)(1), ~~however,~~ allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio air time, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons and website designers.
- [4] Paragraph (b)(5) ~~permits nominal gifts as might be given for holidays, or other ordinary social hospitality.~~ Gifts are prohibited if offered or given in compensation of any promise, agreement or understanding that such gifts would be forthcoming or that referrals would be made or encouraged in the future.
- [5] ~~Moreover,~~ a A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator’s communications are consistent with Rule 7.1 (communications concerning a lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. See Comment [2] (definition of “recommendation”). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).
- [6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such Qualified referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association’s Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. ~~See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral agreements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. For the purposes of Rule 7.2(b)(4), such reciprocal referral agreements do not constitute a prohibited thing of value. Conflicts of interest created by such agreements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

### **COMMUNICATIONS ABOUT FIELDS OF PRACTICE**

[9] Paragraph (a) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[11] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

### **REQUIRED CONTACT INFORMATION**

[12] This Rule requires that any communication about a lawyer or law firm's services include the prominent name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

### **Oklahoma Modification**

~~The Oklahoma version of Rule 7.2(b)(4) adds language to the text and Comment to underscore that reciprocal referral agreements do not constitute a prohibited thing of value. The Oklahoma version retains the preexisting Oklahoma formulation extending the prohibition of Rule 7.2(b) to both direct and indirect things of value:~~



### RULE 7.3 SOLICITATION OF CLIENTS

- (a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
- (~~a~~) (b) A lawyer shall not solicit professional employment by live person-to-person contact in-person, live telephone or real-time electronic contact, solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the ~~person~~ person contacted is with a:
- (1) ~~is a lawyer; or~~
  - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer;  
or
  - (3) person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.
- (~~b~~) (c) A lawyer shall not solicit professional employment ~~by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph (a), if:
- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;  
or
  - (2) the solicitation involves coercion, duress or harassment.
- (~~c~~) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
- (~~d~~) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.
- (~~d~~) (e) Notwithstanding the prohibitions in this Rule paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses ~~in-person or telephone~~ live person-to-person contact to ~~solicit~~ enroll memberships or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### COMMENT

- [1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or the law firm’s pecuniary gain. A lawyer’s communication is typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic Internet searches.~~
- [2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications such as Skype or FaceTime, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. There is a A potential for abuse

overreaching exists when a solicitation involves a lawyer, seeking pecuniary gain, direct in-person, live telephone or real-time electronic contact solicits a person by a lawyer with someone known to be in need of legal services. These ~~This~~ forms of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it **difficult to fully to** evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon ~~being retained immediately~~ an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

- [3] ~~This~~ The potential for abuse overreaching inherent in live person-to-person contact direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that ~~do not involve real-time contact and do not violate other laws governing solicitations~~. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.
- [4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of live person-to-person direct in-person, telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.
- [4] There is far less likelihood that a lawyer would engage in ~~abusive practices~~ overreaching against a former client, or a person with whom the lawyer has close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for ~~abuse overreaching~~ when the person contacted is a lawyer or is known to be an experienced user of the type of legal services involved for business purposes. For instance, an "experienced user" of legal services for business matters may include those who hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who hire lawyers for lease or contract issues; and other people who retain lawyers for business transactions or formations. Consequently, the general prohibition in Rule 7.3(a) and the requirements of 7.3(c) are not applicable in those situations. Also, Paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.
- [5] ~~But even permitted forms of solicitation can be abused. Thus, any~~ A solicitation that which contains false or misleading information which is false or misleading within the meaning of Rule 7.1, that which involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or that which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(c)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b). Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.
- [6] This Rule is does not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual

acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

- [7] ~~The requirement in 7.3(c) that certain communications be marked “Advertising Material” does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~
- [7] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.
- [8] Paragraph ~~(d)~~ (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to ~~solicit~~ enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph ~~(d)~~ (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the ~~in-person or telephone~~ person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but ~~is to~~ must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3~~(b)~~ (c). ~~See 8.4(a).~~



## ETHICS COUNSEL

### DID YOU KNOW?

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

### CONTACT

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

FIND MORE MEMBER BENEFITS AT [WWW.OKBAR.ORG/MEMBERBENEFITS](http://WWW.OKBAR.ORG/MEMBERBENEFITS)

2024  
*Patrick A. Williams*  
**CRIMINAL DEFENSE INSTITUTE**  
&  
**OCDLA ANNUAL MEETING**

**JUNE 27 & 28, 2024**  
**RIVER SPIRIT HOTEL & CASINO**  
**TULSA, OK**



The Oklahoma Criminal Defense Lawyers Association, Oklahoma Indigent Defense System, Oklahoma County and Tulsa County Public Defender Offices proudly present the *Patrick A. Williams Criminal Defense Institute & OCDLA Annual Meeting*. This year the CDI will be held at the River Spirit Casino Resort in Tulsa, OK.

The OCDLA awards presentation & Annual Meeting will take place on Thursday evening of the Institute, along with dinner and a happy hour. Awards to be given are:

**The Clarence Darrow Award, Thurgood Marshall Appellate Advocacy Award & Lord Thomas Erskine Award, Jack D. Pointer Criminal Defense Advocacy Award**

**Cutoff date for nominations is May 31, 2024 @ 5:00pm.**

For OCDLA information, awards criteria & past award winners, please visit  
**[www.ocdlaoklahoma.com](http://www.ocdlaoklahoma.com)**

**Please send nominations to:**

**Mail: OCDLA**  
**PO Box 2272**  
**OKC, OK 73101-2272**

**Email: [bdp@for-the-defense.com](mailto:bdp@for-the-defense.com)**

**Fax: 405-212-5024**

**FOR MORE INFO: Email: [bdp@for-the-defense.com](mailto:bdp@for-the-defense.com) or call the OCDLA: 405-212-5024**

**2024 CRIMINAL DEFENSE INSTITUTE**  
(FULL AGENDA AVAILABLE AT [WWW.OCDLAOKLAHOMA.COM](http://WWW.OCDLAOKLAHOMA.COM))

**THURSDAY, JUNE 27, 2024**

- Legislative Update - *Tim Laughlin, OIDS Executive Director*
- Evidence Code - *Debbie Maddox, OIDS Lawton*
- The Child Forensic Interview – *Jacki Bashkoff, PhD, Albany, NY*
- 3 Keys to Winning Arguments in Forensics – *Steven Epstein, Garden City, NY*
- Lawyers Mental Health/Burnout /Techniques to Overcome\*- *Lexlee Overton, Baton Rouge*
- Lawyers Helping Lawyers\* – *Scott Goode, Oklahoma Bar Association*
- Jury Investigations – *Julie Gardner, Katrina Legler, Kristi Christopher, Fed PD Office*

**OCDLA ANNUAL MEETING AND AWARDS DINNER**

- 5:30pm - Sponsored Happy Hour
- 6:30pm - Annual Meeting
- 7:00pm - Awards Dinner

**FRIDAY, JUNE 28, 2024**

- Psychosexual Evaluations - *Brenda Carter, Oklahoma City*
- Voir Dire-The Colorado Method - *David Lane-Denver, Colorado*

**Registration Fees (Awards Dinner Included)**

-OCDLA Member	_____	\$ 300.00
-Non-Member	_____	\$ 350.00
-Registration after June 21 <sup>st</sup>	_____	\$ 325.00 (OCDLA Member)
	_____	\$ 375.00 (Non-Member)
-Printed Materials _____	\$ 45.00	Dinner Guest _____ \$ 35.00

TOTAL: \_\_\_\_\_

Name: \_\_\_\_\_ Bar #: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Credit Card Info: # \_\_\_\_\_ Exp. Date \_\_\_\_\_

**Location**

The River Spirit Resort has a room rate of \$119.00 for the CDI. This rate is good until June 1<sup>st</sup>. For room reservations please call 1-888-748-3731 or online @ [www.riverspirittulsa.com](http://www.riverspirittulsa.com). If calling, reference the Oklahoma Criminal Defense Lawyers Association or visit OCDLA website for direct link.

Visit [www.OCDLAOKLAHOMA.com](http://WWW.OCDLAOKLAHOMA.COM) to register or mail this ad with payment to:  
OCDLA, PO BOX 2272, OKC, OK 73101

# Embracing Bar Leadership

By Janet Johnson

**I**N MID-MARCH, I HAD THE great fortune of attending the ABA Bar Leadership Institute with OBA President-Elect Ken Williams. I always leave such meetings invigorated and sparked with new energy and pride – not just in furtherance of my role as a bar leader but as a lawyer in Oklahoma.

I am proud to live and practice in the heartland of America. Oklahoma has a complex and rich history, vibrant culture and dynamic legal landscape, all of which offer an array of opportunities and advantages for those pursuing a career in law. From the urban cores to the rural landscapes, being a lawyer in Oklahoma is an enriching experience filled with unique benefits.

Something I have found to be advantageous is the strong sense of community that comes with practicing law in Oklahoma. I believe Oklahoma fosters a close-knit legal community where professionals can collaborate and support one another. Whether it's through OBA section and committee involvement, local bar associations or Inns of Court, lawyers in Oklahoma have ample opportunities to make meaningful connections and contribute positively to society. A sense of connectedness is never something I want to take for granted.

I also learned that many other states are impressed by the diverse range of practice areas in Oklahoma. From oil and gas law to Native



American law, environmental law to agricultural law, the state's economy and demographics present a multitude of legal opportunities. Whether representing multinational corporations or advocating for marginalized communities, lawyers in Oklahoma have the chance to work on cases that have both local and global significance.

Furthermore, Oklahoma's legal system is characterized by its commitment to fairness and accessibility. The state's judiciary is well known for its impartiality and dedication to upholding the rule of law. With a well-established judicial selection process and a judiciary that values transparency and accountability, lawyers in Oklahoma can have confidence in the integrity of the legal process.

Alas, being a lawyer in Oklahoma offers a myriad of advantages that make it a truly rewarding and

fulfilling career choice. From the sense of community among legal professionals to the diverse range of practice areas and opportunities for professional growth, Oklahoma provides an ideal environment for lawyers to thrive. With its commitment to justice, fairness and accessibility, Oklahoma's legal landscape is one that inspires and empowers lawyers to make a positive impact on society while enjoying a fulfilling and meaningful career. I am proud to be an Oklahoma lawyer!

A handwritten signature in black ink that reads "Janet".



To contact Executive Director Johnson, email her at [janetj@okbar.org](mailto:janetj@okbar.org).



# **ONE ASSOCIATION MANY OPPORTUNITIES**

**JOIN AN OBA COMMITTEE TODAY!**

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

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



# AI Takes Center Stage at ABA TECHSHOW 2024

By Jim Calloway and Julie Bays

**A**S OUR READERS KNOW, we consider ABA TECHSHOW a superb annual conference bringing together practicing lawyers, legal technology experts, founders of legal tech startups and many others offering their products and services to the legal community. OBA Practice Management Advisor Julie Bays had a special role this year, serving on the ABA TECHSHOW planning board.

A year ago, when ABA TECHSHOW 2023 commenced, a national cable news network previewed Casetext's new product, CoCounsel, a legal research tool powered by artificial intelligence (AI). The hosts discussed how this product would impact law firm staffing, adding to the existing discussion on

how AI developments would affect lawyers. So, this year, everyone anticipated many AI announcements and demonstrations at ABA TECHSHOW 2024, and we were correct. AI was the hot topic with several vendors who unveiled new tools and features that use AI. We saw several impressive AI demonstrations and listened to many pitches that highlighted AI-powered features coming soon.

Microsoft's Ben Schorr gave a talk on Microsoft Copilot to a packed room. Mr. Schorr also spoke with Catherine Sanders Reach, the director of the Center for Practice Management at the North Carolina Bar Association. Their session, "Revitalize Your Law Firm's Knowledge Management

with AI," examined how AI can help lawyers manage, access and use their firm's collective knowledge and expertise. The audience was so interested that Ms. Reach and Mr. Schorr were flooded with questions. Both Ms. Reach and Mr. Schorr will be speaking at our 2024 OBA Annual Meeting in July.

But it wasn't all about AI. In fact, many of the popular programs were programs that may have been presented at TECHSHOW years ago, but the tools to accomplish the tasks have evolved and changed. Sessions on using Microsoft Word more effectively drew large audiences. The strong interest showed that while flashier legal tech grabbed headlines, nuts-and-bolts software competency sessions still resonated with TECHSHOW's core audience of legal professionals. For example, OBA Management Assistance Director Jim Calloway and Laura L. Keeler, law practice advisor at Lawyers Concerned for Lawyers at the Massachusetts Law Office Management Assistance Program, co-presented a session called "Outfitting the Solo & Small Firm with Essential Tech" that attracted a good audience.

Another interesting session was titled "Winning the Change Management Challenge with Gamification," presented by Charity Anastasio and Ruby L. Powers. The duo provided a comprehensive





overview of how law firms can leverage gamification techniques to increase employee engagement, boost productivity and enhance client satisfaction. Their session highlighted the potential of gamification as a powerful change management tool, providing attendees with practical strategies to foster a more dynamic, efficient and enjoyable work environment within their firms.

Ms. Bays gave a presentation on “Automating Your Documents – Avoiding Traps and Pitfalls” that we will certainly be offering in July at the OBA Annual Meeting. Ms. Bays provided attendees with practical guidance on successfully implementing document automation solutions at their law firms.

“Cutting-Edge Electronic Evidence: Explore Emojiland – How Will You Decode Tomorrow’s Evidence?” by Dallas lawyer Patrick A. Wright was an interesting program. Given the broad use of emojis in today’s communications, it would be important that those are preserved along with the text portion of messages.

Improved billing and time-capture tools were also on many attendees’ minds, and the services covering those areas usually had crowds at their booths.

TECHSHOW’s Startup Alley competition was the opening event. The contestants were emerging legal tech companies that were selected

by online voting on their various proposals. Each company gave a short demonstration, and the live audience voted. The 2024 winner was AltFee, which describes itself as legal pricing and fixed fee management software.<sup>1</sup> The company offers a free trial. It was not surprising to us that a product assisting in the transition to fixed fees was highly ranked by the attendees. Last year’s winner was Universal Migrator, a tool to assist with transferring data between platforms. If you have ever been involved in a major data migration project, such as changing from one practice management solution to another, you can probably appreciate the utility of a tool that does that well. Many law firms evidently agreed as Universal Migrator went from being in Startup Alley in 2023 to being a TECHSHOW diamond sponsor – the highest level of sponsorship – in 2024.<sup>2</sup>

Mr. Calloway, who has attended ABA TECHSHOW for more than 20 years, discussed the history of TECHSHOW with another long-time attendee, and the best description we came up with was that TECHSHOW is special. We appreciate that the word “special” is not very descriptive or informative. But there is a positive tone about TECHSHOW. Legal technology has created great wealth for some over the last decade. But those CEOs still attend TECHSHOW and happily greet their customers and other conference attendees. Several

Oklahoma lawyers regularly attend. The OU College of Law sent a delegation of law students, who all seemed to be enjoying themselves thoroughly.

We hope to see you next year for the 40th annual ABA TECHSHOW, held in Chicago April 2-5, 2025. We also hope you will join us at this year’s OBA Annual Meeting, held July 9-12 at Embassy Suites in Norman, to hear about just a few of the hot topics that were discussed at this year’s TECHSHOW and much more. For those looking to take a deeper dive into AI topics, be sure to join us July 12 for “Artificial Intelligence: Shaping the Future of Law Practice,” the OBA’s first full-day conference devoted to exploring the emerging world of AI for lawyers.

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

Ms. Bays is the OBA practice management advisor, aiding attorneys in using technology and other tools to efficiently manage their offices.

#### ENDNOTES

1. [www.altfeeco.com](http://www.altfeeco.com).
2. <https://bit.ly/43jMU6c>.

## Advertising: The Basics

By Richard Stevens

**L**AWYERS OFTEN ASK ABOUT the rules governing advertising. The rules that govern lawyer advertising in Oklahoma are found at 7.1-7.5 of the Oklahoma Rules of Professional Conduct. The rules are in a section of the ORPC titled “Information About Legal Services.”

### ORPC 7.1 COMMUNICATION

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

ORPC 7.1 requires that advertising and any other communications about a lawyer’s services be truthful and not misleading. The prohibition of false or misleading statements includes both explicit falsehoods and falsehoods implicit in other claims. Lawyers have been disciplined for misleading statements regarding qualifications, the number of lawyers in a firm, the legal experience of lawyers in a firm and the outcomes of cases handled by the lawyer or law firm.

The rule also prohibits lawyers from making statements that are literally true but misleading. A lawyer omitting important information, such as information about

not being admitted to a particular jurisdiction may violate this rule. A lawyer who provides information in a manner that would cause a reasonable person to reach an unwarranted conclusion about the lawyer or the lawyer’s services may also violate this rule. Omissions about fees, such as advertisements that no fee will be charged, may violate the rule unless it also states that clients are responsible for costs and expenses of litigation.

A literally true statement of past results in a particular case or cases may violate the rule if it creates an unjustified expectation that the lawyer can obtain the same results without reference to specific facts and circumstances of each client’s case. In other jurisdictions, statements of past results have been found to be misleading if not accompanied by a disclaimer that each case is different, and the client’s results may vary.

### ORPC 7.2 ADVERTISING

ORPC 7.2 allows lawyers to “advertise services through written, recorded or electronic communication, including public media,” but prohibits lawyers from paying a person to recommend the lawyer’s services. The rule also excludes from that prohibition the payment of reasonable costs of advertising or communications allowed by the rules. The lawyer may also pay the usual charges of a legal service plan or a qualified lawyer referral service. Lawyers may refer clients to another lawyer or a non-lawyer professional, pursuant to an agreement not prohibited by the rules, which provides for the referral of clients to the lawyer. The referral agreement may not be exclusive, and the client must be informed of the existence and nature of the agreement.

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In other jurisdictions, statements of past results have been found to be misleading if not accompanied by a disclaimer that each case is different, and the client’s results may vary.

### ORPC 7.3 SOLICITATION

ORPC 7.3 provides, “A lawyer shall not by in-person, live telephone or real-time electronic contact, solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.” There are exemptions for soliciting other lawyers, family members, close friends or former clients. The rule also prohibits soliciting:

professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or (2) the solicitation involves coercion, duress or harassment.

Comment [1] defines solicitation as:

a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a

television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

### ORPC 7.4 FIELDS OF PRACTICE AND CERTIFICATIONS

ORPC 7.4 makes it clear that lawyers may communicate “the fact that the lawyer does or does not practice in particular fields of law or limits his practice to or concentrates in particular fields of law.” The rule also allows lawyers to communicate certification as a specialist in patent and trademark law or admiralty.

Lawyers may communicate certification as a specialist in a particular field by the licensing authority of a state in which the lawyer is admitted and so certified. The lawyer must comply with the requirements of the state in which the lawyer is certified as a specialist. The rule also requires that the lawyer communicate “that such certification is not recognized by the Supreme Court of the State of Oklahoma.” The rule also allows the communication of certification of specialization by the Supreme Court of Oklahoma, should the court allow such certification in the future.

### ORPC 7.5 FIRM NAMES AND LETTERHEADS

ORPC 7.5 prohibits the use of a firm name, letterhead or other professional designation if it is false

or misleading. A trade name may be used if it does not imply a connection with a government agency or a public or charitable organization. Any trade name must comply with ORPC 7.1.

Law firms with offices in more than one jurisdiction may use the same name in each jurisdiction but must identify the jurisdictional limitations of lawyers not licensed in the jurisdiction where the office is located. The name of a lawyer holding public office may not be used in the name of a law firm during any “substantial period in which the lawyer is not actively and regularly practicing with the firm.” “Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.”

### THERE IS MORE

This summary is not exhaustive of the provisions of these rules. I recommend that lawyers review the rules before advertising.

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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](http://www.okbar.org/ec).

## Meeting Summary

*The Oklahoma Bar Association Board of Governors met Jan. 18.*

### REPORT OF THE PRESIDENT

President Pringle reported he attended a hearing on the OBA budget at the Oklahoma Supreme Court, the Board of Governors has-been party, the OAMIC board meeting and the orientation for OBA section and committee chairs. He spoke to the Garfield County Bar Association and worked on appointments and ongoing OBA issues, such as planning for a strategic planning meeting with the Board of Governors, ongoing litigation and bar facilities renovations.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Williams reported by email he accepted appointments as chair of the Strategic Planning Committee and Board of Governors liaison to the Membership Engagement Committee and the Investment Committee. He confirmed the acceptance of volunteers for members with expiring terms for the Strategic Planning Committee. He attended the OBA budget hearing at the Oklahoma Supreme Court and Board of Governors has-been party. He confirmed his replacement chair for the Professionalism Committee and assisted in coordinating the first 2024 CLE presentation for the Professionalism Committee. He mentored a potential 2025 vice president candidate and worked on qualification requirements for his service on the OAMIC Board of Directors.

### REPORT OF THE VICE PRESIDENT

Vice President Peckio reported she attended the Board of Governors has-been party.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the OBA budget hearing at the Oklahoma Supreme Court, met with multiple departments regarding new lawyer email processes and conducted the orientation for OBA section and committee chairs. She attended a meeting with Family Law Section Chair Kimberly Hays and the OBA Heroes Program coordinator, a LegisOK training and meetings regarding ongoing litigation, ongoing bar facilities projects and strategic planning. She presented at the 2024 OBA Leadership Academy meeting and met with the OBF to plan an upcoming joint reception. She also attended a Bench and Bar Committee meeting and the Board of Governors has-been party.

### REPORT OF THE IMMEDIATE PAST PRESIDENT

Immediate Past President Hermanson reported he chaired the Justice Assistance Grant board meeting and attended the District Attorneys Council technology meeting, board meeting and Senate Budget Committee hearings. He also attended the Board of Governors has-been party.

### BOARD MEMBER REPORTS

#### Governor Ailles Bahm

reported she attended meetings for the Bench and Bar Committee, the Legislative Monitoring Committee's Legislative Kickoff and the has-been party. **Governor Barbush** reported by email he

accepted an appointment to serve on the Strategic Planning Committee and attended the Bryan County Bar Association holiday party and the Choctaw Nation Bar Association meeting. **Governor Bracken** reported by email he attended the Bench and Bar Committee meeting and the has-been party. He discussed and strategized how to amend the Oklahoma Heroes Program volunteer network and recruited new members to join the Military Assistance Committee. **Governor Conner** reported by email he attended the Garfield County Bar Association meeting, where President Pringle spoke. **Governor Dow** reported she attended the Oklahoma County Bar Association Family Law Section meeting, the Cleveland County Bar Association monthly meeting, the Mary Abbott Children's House board meeting and the has-been party. **Governor Hixon** reported he attended the Tulsa County Bar Association holiday party, Executive Committee meetings and a Board of Directors meeting. He also attended Board of Directors meetings for the Will Rogers Memorial Foundation and Morton Comprehensive Health Services, as well as the has-been party. **Governor Knott** reported

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Chairperson Scott B. Goode discussed highlights from the written report, highlighting how the committee is addressing problems with the answering service, including a new protocol for suicide risk.

she presented CLE programs at the OCU School of Law and the Canadian County Bar Association meeting. **Governor Oldfield** reported he attended the Board of Governors has-been party. **Governor Rogers** reported he attended the Board of Governors has-been party. **Governor Thurman** reported he attended the Pontotoc County Bar Association Christmas party, the dedication for the memorial honoring fallen Pontotoc County officers, the multidisciplinary team meeting to discuss district child abuse cases and the Board of Governors has-been party. **Governor Trevillion** reported he attended the Board of Governors has-been party and the Oklahoma County Bar Association board meeting and holiday party.

#### REPORT OF THE GENERAL COUNSEL

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

#### BOARD LIAISON REPORTS

Vice President Peckio reported the **Strategic Planning Committee** is planning a retreat in Ardmore in August. Past President Hermanson reported the **Section Leaders Council** recently met with President Pringle. Governor Hixon reported the following day was the deadline for student entries for the **Law Day Committee's** annual art and writing contests, and the committee would meet in February to judge the entries and determine this year's winners. Governor Knott reported

the **Law Schools Committee** has visits scheduled at the OCU and TU law schools. Governor Ailles Bahm said the **Bench and Bar Committee** recently met and elected new officers. She said committee members are brainstorming creative ways to encourage greater participation among inactive members.

#### LAWYERS HELPING LAWYERS ANNUAL REPORT

Chairperson Scott B. Goode discussed highlights from the written report, highlighting how the committee is addressing problems with the answering service, including a new protocol for suicide risk. He reported the hotline is not being utilized at expected levels, with only 95 calls received in 2023. Outreach to rural areas continues to be a challenge. Also discussed were the demographics of those who are calling along with frequently encountered issues, including anxiety and depression. Suicide in the legal profession continues to be an area of critical focus. The committee suggests adding a paid OBA staff member to proactively promote the availability of programs.

#### STRATEGIC PLANNING PROPOSAL

President Pringle and Executive Director Johnson described feedback received over the prior year of review of the existing strategic plan. The plan is to bring in a professional strategic planning outfit that was highly recommended by the Oklahoma Bar Foundation.

## 2024 PRESIDENTIAL APPOINTMENTS

The board passed motions to approve the following appointments.

**OBA MCLE Commission:** President Pringle appoints Alexa Stumpff White of Ardmore to a term that begins Jan. 1, 2024, and expires Dec. 31, 2026. Vice President Peckio moved and Governor Knott seconded to approve the appointment. Motion passed.

**Professional Responsibility Tribunal (PRT):** President Pringle appoints Lynn Pringle of Oklahoma City to complete the unexpired term of Jeff D. Trevillion that expires June 30, 2024. He also appoints Lynn Pringle to a full term that begins July 1, 2024, and expires June 30, 2027.

President Pringle also made the following appointments that did not require board approval.

**Legal Ethics Advisory Panel (LEAP):** Timila S. Rother, Oklahoma City; Myrna Latham, Oklahoma City; and Jim Hicks, Tulsa, to terms that begin Jan. 1, 2024, and expire Dec. 31, 2026.

**Investment Committee:** Charles Floyd, Jenks; Paul B. Cason, Oklahoma City; Brian Pierson, Oklahoma City; and Sarah Green, Oklahoma City, to terms that begin Jan. 1, 2024, and expire Dec. 31, 2026.

**Standing Committee – Access to Justice:** Chairperson Brian Candelaria, Vice Chairperson Rick Goralewicz and Board of Governors liaison Laura R. Talbert. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Awards:** Chairperson LeAnne McGill and Board of Governors liaison Dustin Conner. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Bar Center Facilities:** Chairperson Cody Cooper and Board of Governors liaison Jana L. Knott.

Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Bench and Bar:** Co-Chairperson Judge Richard Ogden, Co-Chairperson Leah T. Rudnicki, Vice Chairperson Judge Thad Balkman and Board of Governors liaison Angela Ailles Bahm. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Cannabis Law:** Chairperson Felina N. Rivera and Board of Governors liaison John Barbush. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Civil Procedure and Evidence Code:** Chairperson Spencer Habluetzel and Board of Governors liaison Nicholas E. Thurman. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Clients’ Security Fund:** Board of Governors liaison Timothy Lee Rogers. Term begins Jan. 1, 2024, and expires Dec. 31, 2024.

**Standing Committee – Disaster Response and Relief:** Chairperson Molly Aspen and Board of Governors liaison Allyson E. Dow. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Diversity:** Board of Governors liaison Allyson E. Dow. Term begins Jan. 1, 2024, and expires Dec. 31, 2024.

**Standing Committee – Group Insurance:** Chairperson Angela Ables, Vice Chairperson Susan D. Dobbins and Board of Governors liaison Jeff D. Trevillion. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Investment:** Board of Governors liaison D. Kenyon Williams Jr. Term begins Jan. 1, 2024, and expires Dec. 31, 2024.

**Standing Committee – Law Day:** Chairperson Ed Wunch and Board of Governors liaison Philip D.

Hixon. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Lawyers Helping Lawyers Assistance Program:** Chairperson Scott B. Goode, Vice Chairperson Sheila Naifeh, Board of Governors liaison John Barbush and Board of Governors liaison Angela Ailles Bahm. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Legal Internship:** Chairperson Trent Hall Baggett and Board of Governors liaison William Ladd Oldfield. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Legislative Monitoring:** Chairperson Shanda McKenney, Vice Chairperson Teena Gunter and Board of Governors liaison S. Shea Bracken. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Membership Engagement Communications/Member Services:** Chairperson Tim DeClerck, Vice Chairperson April Moaning and Board of Governors liaison Chad A. Locke. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Military Assistance:** Chairperson/Board of Governors liaison S. Shea Bracken. Term begins Jan. 1, 2024, and expires Dec. 31, 2024.

**Standing Committee – Professionalism:** Chairperson Richard D. White Jr. and Board of Governors liaison William Ladd Oldfield. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Rules of Professional Conduct:** Chairperson Judge Thad Balkman and Board of Governors liaison Allyson E. Dow. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee – Section Leaders Council (SLC):** Board of Governors liaison Brian T.

Hermanson. Term begins Jan. 1, 2024, and expires Dec. 31, 2024.

**Standing Committee – Solo and Small Firm Conference**

**Planning:** Chairperson Elaine Dowling, Board of Governors liaison Brian T. Hermanson and Board of Governors liaison Laura R. Talbert. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**Standing Committee –**

**Strategic Planning:** Chairperson D. Kenyon Williams Jr. and Board of Governors liaison Amber Peckio. Terms begin Jan. 1, 2024, and expire Dec. 31, 2024.

**UPCOMING OBA AND COUNTY BAR EVENTS**

President Pringle reviewed upcoming bar-related events. 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 February and March, 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, April 19.



## OPENING YOUR LAW PRACTICE

**DID YOU KNOW?**

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

## CLOSING YOUR LAW PRACTICE

**DID YOU KNOW?**

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

**CONTACT**

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

**CHECK IT OUT**

Visit [www.okbar.org/oyp](http://www.okbar.org/oyp) and [www.okbar.org/map/cylp](http://www.okbar.org/map/cylp).

**FIND MORE MEMBER BENEFITS AT [WWW.OKBAR.ORG/MEMBERBENEFITS](http://WWW.OKBAR.ORG/MEMBERBENEFITS)**

# Oklahoma Bar Foundation Supports Justice, Education and Hope

By Rachael Van Horn

**A**DAM HAD NO FUTURE. If you ask him, he'll tell you. We can't discuss Adam's real name because his participation in the juvenile system of justice is protected.

The *Woodward News* had a chance to read a letter from Adam, who shared details about his experience when he was sent to the Woodward Detention Center, which is managed by Western Plains Youth & Family Services (WPYFS). He writes pages about his exposure to the first mental health treatment and counseling he ever had at the center and how that not only changed his future but saved his life.

"I was 17, running around with gangs, drinking alcohol and smoking every day and doing all the crimes you can think of. Then boom! I'm in Woodward Detention Center," the youth's letter stated. "This place has helped with everything. I'm about to graduate. Mr. Mario [mental health professional Mario Perez] taught me so much about mental health, and he taught me how to let stuff go. Overall, this place helped my mental and physical health. Without being in here, I might be dead."

"In Woodward, there could be as many as 10 juveniles being housed at the center by court order for a wide range of legal offenses," said WPYFS Executive Director

Kevin Evans. "Were it not for the Oklahoma Bar Foundation, there would be zero access to mental health counseling and support for those youths."

An interesting fact: There are about 13,713 attorneys who live or practice in the state of Oklahoma. However, there are 18,795 attorneys (both in and out of state) who are members and contributors of a lesser-known but active sister organization to the OBA, known as the Oklahoma Bar Foundation.

"The OBF was founded in 1946 by several members of the OBA. Through the years, it has become an organization committed to helping meet the legal needs of Oklahomans," said Oklahoma Bar Foundation Executive Director Renée DeMoss.

Lawyers wanted a way to give back to and bolster their communities. This human-focused foundation is the third oldest state bar foundation in the United States.

"In 2024, it will award \$1.4 million in grants to 45 nonprofits serving children, families and immigrants in the state. Since 1946, the OBF has given out more than \$21 million in grants to youth and family-focused charities, under-financed courtrooms in the state and scholarships for those

who want to serve the legal profession at all levels," she said.

"I know what [the OBF has] done for us," Mr. Evans said emphatically. "They have provided vital funding for mental health services for children in juvenile detention [in Woodward]. They have been awesome to us."

Locally, the foundation donates \$15,000 per year to Western Plains Youth & Family Services, specifically to be spent on mental health counseling for juveniles who are in the detention center through court orders.

"Along with providing critical support to organizations that represent and protect the rights and futures of the most vulnerable in the state, the organization is working hard to plug holes in an overloaded Oklahoma legal system, which now has more needs than resources," said Oklahoma Bar Foundation board member and Woodward attorney Jim Dowell.

Indeed, the biggest beneficiaries of the foundation's giving have been Oklahoma's next generation, according to the foundation's most recent financial report. Last year, 58,685 Oklahomans were helped by the Oklahoma Bar Foundation through \$743,624.50 in donations, the report noted. That



includes adult populations who are often not able to access legal counsel. To access the report, visit [www.okbarfoundation.org](http://www.okbarfoundation.org) and click on the 2023 Impact Report button.

“However, that is not all the foundation has accomplished. Through its grants and awards programs, it has provided funding for court improvements, including tech grants for needed equipment. That includes items such as recording devices and video equipment in the courtrooms, software and more,” Mr. Dowell said. “A large portion of those grants are focused in rural area courtrooms,” he added.

In total, in 2023, the OBF granted \$148,366.04 to counties specifically for support equipment, software and audio and visual equipment. “Over the years, we have helped all 77 counties with courtroom needs,” Mr. Dowell said.

Another timely program supported by the OBF is the Court Reporter Rural Service Grant Program. This program aims to increase the availability of court reporters in rural Oklahoma courts by providing educational grants to court-reporting schools for scholarships and equipment. The program also funds stipends for qualified court reporters who agree to work in rural communities.

“Many people don’t understand the negative impact that a critical lack of court reporters has on the effort to provide swift justice for victims and accused alike,” Mr. Dowell said.

Recently, in Woodward County, a frustrated defense attorney waiting outside a busy courtroom discussed with a peer the devastating impact a lack of court reporters has on fair justice for everyone because of the huge scheduling problems in rural courts that have to wait for a visiting court reporter.

Through the OBF, two grant types are available. The first is an Employment Grant, which assists district courts in rural Oklahoma in finding and employing qualified court reporters through a financial incentive grant provided directly to a successful court reporter candidate. The second is an Educational Block Grant, which is awarded to qualified educational institutions with court reporting programs that commit to using grant funds to achieve the objective of meeting court reporter needs in rural Oklahoma. To apply for those grants, visit <https://bit.ly/49ZLhfQ>.

Judge Jon K. Parsley of the Texas County District Court knows firsthand the ethical issues around making sure this critical court reporting

job is filled in all rural courts: “For many years, we have struggled with only one court reporter working for all five judges in the First Judicial District. Our courts simply cannot function without a reporter, so I went on a desperate search for one. The Oklahoma Bar Foundation Court Reporter Rural Services Grant was critical to me in employing a new court reporter. Informing my prospective reporter of the \$15,000 grant for taking the job in the Panhandle sealed the deal. I cannot thank the OBF enough for administering the program that has allowed me to keep the court system functioning in the First Judicial District.”

“An organization with this much reach and a mission that is focused but growing every year needs members,” Mr. Dowell said. “I can assure you that even among lawyers, it is not well enough known what all the OBF does. But more importantly, when we talk to them, a lot of people think all this money stays in large city areas. But that is not true at all. We recognize the need for an emphasis in rural Oklahoma and we respond accordingly.”

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Ms. Van Horn serves as assistant editor for the *Woodward News*.

# Partner

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## Partners for Justice

Join as a partner by giving \$10/month or \$100/year.



## Community Partners for Justice

Your law firm or organization can join by giving \$1,000.



## Legacy Partners for Justice

Leave a legacy by making planned gifts to the OBF. Contact Candice Pace at foundation@okbar.org.

## MORE WAYS TO *support* THE OBF

- CY PRES**  
Leftover monies from class action cases can be designated to the OBF's Court Grant Fund or General Fund.
- MEMORIALS AND TRIBUTES**  
Make a gift in honor of someone. OBF will send a handwritten card to the honoree or family.
- UNCLAIMED TRUST FUNDS**  
Contact the OBF if you have unclaimed trust funds in your IOLTA Account. (405) 416-7070 or foundation@okbar.org.

## Thank you TO OUR COMMUNITY PARTNERS

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# BAR BENEFITS

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## **MYOKBAR**

### **DID YOU KNOW?**

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

### **CHECK IT OUT**

Log in with the "MyOKBar Login" link at the top of [www.okbar.org](http://www.okbar.org).

**FIND MORE MEMBER BENEFITS AT [WWW.OKBAR.ORG/MEMBERBENEFITS](http://WWW.OKBAR.ORG/MEMBERBENEFITS)**

# Embracing Innovation: The Intersection of AI, Young Lawyers and Legal Practice

By *Laura R. Talbert*

**A**RTIFICIAL INTELLIGENCE (AI) is reshaping various facets of society, and the legal domain is no exception. In the ever-evolving landscape of legal practice, today's young lawyers are finding themselves at the intersection of traditional legal methodologies and cutting-edge technologies like AI, which presents both opportunities and challenges. As digital natives, young lawyers are well positioned to embrace AI tools and leverage them to enhance their legal practice in various ways.

One significant aspect of AI's intersection with young lawyers and practicing law is its potential to streamline routine tasks, increase efficiency and improve access to justice. AI-powered legal research platforms can sift through vast amounts of data, analyze case law and identify relevant precedents much faster than traditional methods. This enables young lawyers to focus their time and energy on more strategic and high-value tasks, such as client counseling, negotiation and courtroom advocacy.

Furthermore, AI can serve as a valuable tool for young lawyers to improve the quality of their legal work. By leveraging AI-driven analytics and predictive modeling, young lawyers can gain insights

into case outcomes, identify potential risks and develop more informed legal strategies. This data-driven approach can enhance the effectiveness of legal representation and provide clients with greater confidence in their legal counsel.

However, as with any technological innovation, the integration of AI into legal practice also presents challenges and considerations for lawyers. One such challenge is the need for ongoing education and training to effectively utilize AI tools. Young lawyers must



*Paying it forward: OBA YLD members assemble bar exam survival kits containing healthy snacks and stress balls for those who sat for the February exam.*



navigate the ethical implications of AI in their legal practice, including concerns related to bias, privacy and transparency. While AI can be a valuable tool in their legal practices, it's crucial to remain vigilant about the potential for bias in AI algorithms and the importance of preserving client privacy and confidentiality. As stewards of justice, lawyers have a responsibility to ensure that AI-driven decision-making aligns with both legal and ethical principles, upholding the integrity of the legal profession.

AI presents invaluable opportunities for young lawyers to

enhance their legal practice, but it's essential to emphasize that it should not be relied upon for everything. Instead, AI should be viewed as one of the many tools in a young lawyer's toolkit. While it can certainly streamline certain tasks and provide beneficial insights, it cannot replace the nuanced comprehension that lawyers bring to their practices. As an attorney, your judgment, critical thinking and legal expertise remain indispensable components of effective legal representation. By leveraging AI as a complementary tool rather than a substitute,

## OBA ETHICS COUNSEL

Through the Office of the Ethics Counsel, OBA members can obtain informal advice and interpretations of the rules of attorney conduct. The ethics counsel issues opinions to attorneys for their own guidance involving an existing set of facts. The ethics counsel issues both oral and written informal advisory opinions. Most questions can be answered over the telephone.

Richard Stevens currently serves as OBA ethics counsel. The Office of the Ethics Counsel is located at the Oklahoma Bar Center.

Contact Mr. Stevens at 405-416-7055 or [ethicscounsel@okbar.org](mailto:ethicscounsel@okbar.org).

Learn more at [www.okbar.org/ec](http://www.okbar.org/ec).

young lawyers can maximize the benefits while retaining control over the quality and integrity of their legal work.

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Ms. Talbert is a lawyer in Oklahoma City and serves as the YLD chairperson. She may be contacted at [lraltalbert@gmail.com](mailto:lraltalbert@gmail.com).

# FOR YOUR INFORMATION

## VOLUNTEER FOR LAW DAY 2024

Volunteer lawyers are needed for Ask A Lawyer on Wednesday, May 1, and other Law Day-related events. To volunteer in Oklahoma City, contact Connie Simmons at [connie@okcbar.org](mailto:connie@okcbar.org) or 405-236-8421. To volunteer in the Tulsa area, contact Dan Crawford at [lawdaytulsa@okbar.org](mailto:lawdaytulsa@okbar.org) or 918-240-7331. For all other counties, contact your county bar chair. Visit [www.okbar.org/lawday](http://www.okbar.org/lawday) for more information.



## LHL DISCUSSION GROUP HOSTS MAY MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet May 2 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet May 9 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet May 23 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](http://www.okbar.org/lhl) for more information, and be sure to keep an eye on the OBA events calendar at [www.okbar.org/events](http://www.okbar.org/events) for upcoming discussion group meeting dates.

## IMPORTANT UPCOMING DATES

The bar center will be closed Monday, May 27, in observance of Memorial Day.

Also, be sure to docket these important upcoming events:

*Law Day:* Wednesday, May 1. Contact your county bar chair for information on Law Day events and volunteer opportunities in your county.

*Opening Your Law Practice:* Tuesday, May 7. This is a no-cost, semi-annual event for new lawyers. This program will address resources for starting a new law practice, professionalism, client management and so much more. Learn more at [www.okbar.org/oyp](http://www.okbar.org/oyp).

*OBA Annual Meeting:* July 9-12. Join us at the 2024 Annual Meeting at the Embassy Suites in Norman. This year's event, held in conjunction with the Oklahoma Judicial Conference, will be a relaxed and informal event. Keep your eyes peeled for more information, and make plans to attend! Learn more at [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting).



## NEW ATTORNEY SWEARING-IN TO BE HELD IN APRIL

At 10 a.m. on Tuesday, April 23, new bar admittees will be sworn in. The swearing-in ceremony will be held at the Oklahoma City Community College Visual and Performing Arts Center, 7777 S. May Ave., in Oklahoma City.



## 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](mailto: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.



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## ON THE MOVE

**Taylor McLawhorn** has joined the Oklahoma City office of the Wyatt Law Office. He has spent most of his 16 years as a criminal defense lawyer in the public and private sectors, having served as lead counsel in hundreds of preliminary hearings and more than 20 jury trials. Mr. McLawhorn received his J.D. from the OCU School of Law in 2008.

**Joseph W. Lang** has joined the Tulsa office of the law firm of GableGotwals as of counsel. He practices in the areas of commercial litigation and labor and employment matters. Mr. Lang previously served as a judicial law clerk for Judge John E. Dowdell and Judge Terence C. Kern in the U.S. District Court for the Northern District of Oklahoma. He received his J.D. from the OCU School of Law.

**Michaya Collier** has joined the Oklahoma City law firm of DeBee, Clark & Weber PLLC as an associate attorney. She primarily practices in the areas of tax-exempt organizations and business transactions. Ms. Collier received her J.D. from the OU College of Law in 2023.

**Judge Mark Barcus** has been named assistant chief immigration judge for training and management by the U.S. Department of Justice Executive Office for Immigration Review. He coordinates and supervises all judicial, legal and staff training for immigration courts nationwide. He also supervises the new West Los Angeles training court. Judge Barcus is a former Tulsa County district judge and has been with the immigration courts since 2017.

**Mark Melton** has been selected by Gov. Stitt to serve as associate district judge for Murray County. He began his career as a personal injury attorney and practiced civil litigation. In 2014, he opened his private practice in Davis, where he handled family, criminal and civil matters. Mr. Melton received his J.D. from the OCU School of Law in 2005.

**Jason Temple** has been promoted to shareholder in the Corporate Group of Brown & Fortunato. Based in Tulsa, he advises public and private clients on a broad spectrum of business matters. He has experience in matters related to entity formation, corporate governance, financing, reorganization and restructuring, mergers and acquisitions, business transactions, contract drafting and negotiation, taxation and business succession.

### 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 June issue must be received by May 1.*



## KUDOS

**Chief Justice M. John Kane IV** and the Oklahoma Supreme Court have received a special commendation from Freedom of Information Oklahoma for making video recordings of past oral arguments available for the public on the Oklahoma Supreme Court Network website.

**Paul George** has been appointed to the United States delegation to the Working Group on Jurisdiction at the Hague Conference on Private International Law to work on a proposal for a convention on parallel litigation. He is a graduate of OSU, the TU College of Law and Columbia Law School. Mr. George teaches conflict of laws and litigation courses at the Texas A&M University School of Law.

**Josh D. Lee** has been selected to receive the Marian Opala First Amendment Award by Freedom

of Information Oklahoma. The award was named for the late Oklahoma Supreme Court Justice Marian Opala and recognizes individuals for promoting education about or protection of individual rights guaranteed by the First Amendment. Mr. Lee was selected for the award for his longstanding advocacy in and out of the courtroom and his work on his website, FOIBible.

**Attorney General Gentner Drummond** has been selected to receive the Sunshine Award by Freedom of Information Oklahoma. The award recognizes his work to ensure that state and local officials comply with the Open Meeting and Open Records acts. After taking office in 2023, Attorney General Drummond worked to clear a backlog of open record requests at the Oklahoma Attorney General's Office.

## AT THE PODIUM

**Paul R. Foster** of Paul Foster Law Offices PC presented to Oklahoma bankers and other attendees from several states at the Community Bankers Association of Oklahoma's Winter Leadership Conference in Destin, Florida. He presented on "Dynamic Interactive Questions and Answers," a panel of banking regulators from the Federal Reserve, Federal Deposit Insurance Corp., Office of the Comptroller of the Currency and the Oklahoma State Banking Department.

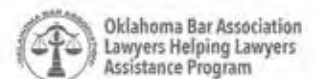
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## IN MEMORIAM

**Willie Joe Albright** of Sulphur died Feb. 11. He was born June 27, 1927. Mr. Albright grew up in Sulphur on a row-crop dairy farm. **He enlisted in the U.S. Navy during World War II and served in the Army during the Korean Conflict with the Office of Military Personnel.** Mr. Albright received his J.D. from the OCU School of Law in 1957. His entire professional career was spent working for the U.S. Department of Agriculture, which combined with his military service, resulted in 50 proud years of U.S. government service. During retirement, he returned to his childhood home in Sulphur and became involved in the community. He served as a board member for the Murray County Rural Water District.

**Catherine J. Coddling Coke** of Altus died Feb. 19. She was born Sept. 10, 1950, in Ponca City. Ms. Coke graduated from Shidler High School as valedictorian and earned her bachelor's degree in music from OU in 1972. She received her J.D. from the OU College of Law in 1975 and served as the city attorney in Altus for many years. During her legal career and continuing into retirement, she was a member of P.E.O. Chapter GQ, the MacDowell Club of Allied Arts and president of the Oklahoma Federation of Music Clubs. Ms. Coke also served as choir director at the First Presbyterian Church of Altus for more than 30 years.

**Charles Lee Hamit** of Nowata died Feb. 20. He was born June 5, 1944, in Hays, Kansas. **Mr. Hamit served in the U.S. Navy during the Vietnam Conflict.** He graduated from Western Illinois University with a bachelor's degree and received his J.D. from the TU College of Law in 1988. He practiced law in Jenks, Sapulpa and Nowata for a decade. For the past 25 years, he served as a municipal judge in South Coffeyville. He was involved with the Living Word Family Church in Nowata and the Grace Community Church in Bartlesville. Mr. Hamit served on the GRAND Mental Health board for 20 years. Memorial contributions may be made to Heifer International, the YWCA or a ministry of your choice.

**James Horace Holloman Jr.** of Oklahoma City died Feb. 7. He was born May 27, 1946, in Wichita Falls, Texas. He graduated from OU with a bachelor's degree in accounting with Phi Beta Kappa honors in 1966. He received his J.D. with highest honors from the OU College of Law in 1969. **Mr. Holloman served as a captain in the U.S. Marine Corps Judge Advocate Division from 1969 to 1972.** He earned his final degree, an LL.M. in taxation, from the NYU School of Law in 1973, graduating second in his class. He practiced law for 50 years, the majority of which he spent at Crowe & Dunlevy, where he chaired the taxation practice. Mr. Holloman was involved in his community. He served as president of the Oklahoma City Community Foundation from 2003 to 2006, as a trustee from 1996 to 2006 and continued to serve as a member

of the foundation's investment committee. He was also an active member of the Deer Creek Board of Education from 1988 to 1998, serving as board president for three years. Throughout his life, he served on countless other committees and groups. Memorial contributions may be made to Trinity Legal Clinic of Oklahoma, the Oklahoma City Community Foundation or FaithWorks of the Inner City.

**Kenneth Ray Johnson** of Ada died Feb. 29. He was born May 4, 1940, in Lexington. He graduated from OU with a bachelor's degree in business administration in 1963 and received his J.D. from the OU College of Law in 1965. Mr. Johnson practiced law in Ada for more than 50 years. He started his own law firm in the early 1970s in partnership with George B. Thompson; the firm was later known as Johnson & Nimmo. Additionally, he was involved in his community, serving as the attorney for the Ada School District and on the Board of Directors of the First National/Vision Bank, Valley View Hospital, the Ada Boys' Club, the Ada Industrial Development Corp. and the Ada Jobs Foundation. Mr. Johnson was also an adjunct professor at East Central University, where he taught business law. He was named the OBA Outstanding Lawyer of the Year in 1969. Memorial contributions may be made to the Oklahoma Fellowship of Christian Athletes.

**D**ouglas Herwig Morgan of Oklahoma City died Feb. 7. He was born Sept. 1, 1948, in Oklahoma City. He graduated from OCU and Ohio State University and received his J.D. from the OU College of Law in 1976. During his time at OCU, he became a member of Kappa Sigma. Mr. Morgan worked as an attorney for the Commissioners of the Land Office and later as a petroleum landman. He was a member of the Church of Jesus Christ of Latter-Day Saints in Warr Acres.

**W**illiam Riley Nix of Sherman, Texas, died Oct. 13, 2023. He was born Feb. 17, 1958, in Lamesa, Texas. He graduated from Texas Tech University in 1980 and received his J.D. from the OCU School of Law in 1985. Mr. Nix developed a practice as a lawyer for several banks in the Texoma region, representing the same clients for well over three decades. He was a member of the First Baptist Church of Sherman and was a Sunday school teacher for many years. Memorial contributions may be made to the First Baptist Church of Sherman.

**R**obert Mark Solano of Claremore died Dec. 3. He was born April 17, 1951. Mr. Solano received his J.D. from Albany Law School in 1981.

# EDITORIAL CALENDAR

## 2024 ISSUES

**MAY**  
**Natural Resources Law**  
 Editor: Melissa DeLacerda  
 melissde@aol.com

**OCTOBER**  
**Aviation Law**  
 Editor: Melanie Wilson Rughani  
 melanie.rughani@crowedunlevy.com

**JUNE**  
**Real Property**  
 Editor: David Youngblood  
 david@youngbloodatoka.com

**NOVEMBER**  
**Probate**  
 Editor: Evan Taylor  
 tayl1256@gmail.com

**SEPTEMBER**  
**Women in Law**  
 Editor: Melissa DeLacerda  
 melissde@aol.com

**DECEMBER**  
**Ethics & Professional Responsibility**  
 Editor: Martha Rupp Carter  
 mruppcarter@yahoo.com

## 2025 ISSUES

**JANUARY**  
**Military & Veterans**  
 Editor: Roy Tucker  
 roy.tucker@oscn.net

**JUNE**  
**Labor & Employment**  
 Editor: Sheila Southard  
 SheilaSouthard@bbsmlaw.com

**FEBRUARY**  
**Law Practice Basics**  
 Editor: Melissa DeLacerda  
 melissde@aol.com

**SEPTEMBER**  
**Torts**  
 Editor: Magdalena Way  
 magda@basslaw.net

**MARCH**  
**Cannabis Law**  
 Editor: Martha Rupp Carter  
 mruppcarter@yahoo.com

**OCTOBER**  
**Immigration Law**  
 Editor: Norma Cossio  
 ngc@mdpplc.com

**APRIL**  
**Alternative Dispute Resolution**  
 Editor: Evan Taylor  
 tayl1256@gmail.com

**NOVEMBER**  
**Trial by Jury**  
 Editor: Roy Tucker  
 roy.tucker@oscn.net

**MAY**  
**Constitutional Law**  
 Editor: Melanie Wilson Rughani  
 melanie.rughani@crowedunlevy.com

**DECEMBER**  
**Ethics & Professional Responsibility**  
 Editor: David Youngblood  
 david@youngbloodatoka.com

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

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## POSITIONS AVAILABLE

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

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](http://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](mailto: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.

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](mailto:Info@TaxHelpOK.com).

FAMILY LAW ATTORNEY. Do you have a desire to help change the lives of those around you? LaCourse Law is looking for a Family Law attorney with at least 2 years of experience to join their team. This is an opportunity that will allow you to make a difference daily in the lives of our clients while enjoying a competitive salary with significant bonus opportunities and great benefits. The right fit will be able to handle their caseload with confidence from start to finish under the supervision of the senior attorney. Please send a cover letter and resume to [tclayton@lacourselaw.com](mailto:tclayton@lacourselaw.com).

## POSITIONS AVAILABLE

**Position Title:** Assistant District Attorney, District Attorney's Office-District 4

**Location:** Garfield County DA's Office, Enid, Oklahoma

**Status:** Full-Time State Employee, Immediate Opening

**Salary:** Salary Range: \$65,000-\$100,000 Plus Benefits

**Benefits:** Insurance for Employee, Spouse, and Dependents; Pension Retirement for Employee

**About the Office:** Tommy Humphries is the District Attorney for DA District 4, which includes Blaine, Canadian, Garfield, Grant and Kingfisher Counties. Our mission is to protect the public by vigorously prosecuting violent crime, protecting and serving crime victims, and diverting appropriate offenders to treatment while maintaining the highest levels of efficiency, ethics and professionalism to ensure that the communities we serve remain healthy and safe.

**Position Summary:** Our Enid office seeks an experienced prosecutor who will be responsible for a variety of legal duties that promote the effective prosecution of criminal felony and misdemeanor cases in Garfield County. Caseload assignments and responsibilities will depend upon successful applicant's skills, interests, and experience. However, preference will be given to candidates with experience prosecuting sexual assault and/or domestic violence cases.

### Position Requirements and Qualifications:

- Graduation from an accredited law school and admission to practice law in Oklahoma.
- Demonstrated experience as a prosecutor.
- Possess excellent oral advocacy, legal analysis and legal writing and editing skills.
- Display strong organizational, interpersonal communication, problem-solving and teamwork skills.
- Must secure and maintain a favorable background investigation.

**To Apply:** Applicants should submit a cover letter, resume, and references to [tommy.humphries@dac.state.ok.us](mailto:tommy.humphries@dac.state.ok.us).

## POSITIONS AVAILABLE

### Assistant Professor of Law – Clinical Legal Education

University of Oklahoma Norman Campus:  
College of Law

**Description:** The successful candidate will teach lawyering skills to students in the Criminal Defense Clinic and/or the Civil Clinic through the direct supervision of Licensed Legal Interns. Clinic students represent clients in misdemeanor and minor felony cases and in a variety of civil cases, including domestic relations, consumer protection, probate, and housing rights in Cleveland and McClain Counties. The Assistant Professor is responsible for overseeing a revolving caseload of approximately 40-80 cases. They will work collaboratively with other clinical faculty members to provide programmatic enhancement activities. They will provide classroom instruction in lawyering skills courses and will participate in clinic-related activities as necessary.

This is a full-time, benefits-eligible twelve-month position. The start date for the position is August 2024. The initial appointment will be for a one-year contract that can lead, after three years, to renewable longer-term contracts with security of position consistent with ABA standards.

**Qualifications:** Applicants must have a J.D. from an ABA-accredited law school. Applicants must currently be licensed to practice law in the state of Oklahoma or must be eligible for and willing to obtain such license. A minimum of 5 years practice experience or 2 years as a clinical faculty member is preferred. Applicants must have a demonstrated interest in pro bono service and appreciate the dynamics of representing low-income persons. Applicants should be familiar with clinical education pedagogy in shaping supervisory techniques.

**Application Instructions:** To apply, please submit application materials through Interfolio at [apply.interfolio.com/139127](https://apply.interfolio.com/139127). Required submission materials include: 1) cover letter; 2) curriculum vitae or resume; 3) names and contact information for three references. Applicants who submit their materials by Feb. 15, 2024, will be considered, but applications received after that date will be reviewed until the position is filled. If you have questions or issues during the application process, please contact the search committee chair, Amelia Pepper, at [apepper@ou.edu](mailto:apepper@ou.edu).

## POSITIONS AVAILABLE

**BUSINESS AND CIVIL LITIGATION ATTORNEY.** Are you ready to take on the challenge of fighting for justice in the world of business and civil litigation? LaCourse Law is looking for a highly motivated Business and Civil Litigation Attorney with at least 2 years of experience to join their growing team. This is a unique opportunity to work on high-stake cases, craft persuasive legal arguments and make a real impact in the courtroom and in the transactional world of business. We pay competitive salaries and benefits with significant bonus opportunities. Join us in our fast-paced and collaborative environment, where your exceptional writing skills and legal acumen will be valued and rewarded. Please send a cover letter and resume to [tclayton@lacourselaw.com](mailto:tclayton@lacourselaw.com).

**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](mailto:smcdaniel@ok-counsel.com).

**THE OKLAHOMA BANKERS ASSOCIATION** is seeking a person to fill the position of General Counsel. The successful individual will work with the Government Relations team to evaluate current and proposed legislation. The position will provide assistance to members, as well as serve as a speaker at Association events, on topics related to compliance and banking. He/she will assist with development of products & services of benefit to the membership as well as articles for Association publications. Interested individuals should submit their resume and compensation requirements to Adrian Beverage, President & CEO, via email ([adrian@oba.com](mailto:adrian@oba.com)).

## POSITIONS AVAILABLE

THE OKLAHOMA ETHICS COMMISSION IS SEEKING A GENERAL COUNSEL. This position will provide advice to the Commissioners of the Ethics Commission and to the Executive Director. All applicants must be active members in good standing with the Oklahoma Bar Association. The Commission was created as a constitutional Commission with the power to write and enforce civil ethics laws for conduct of state officers and employees, campaigns for elective state office, and initiatives and referenda. Applicants should have experience in training and customer service skills working with external and internal customers of the Commission, with an ability to utilize advocacy and litigation skills as necessary. The Commission has a small staff and a collaborative work environment. Resumes should be submitted to [ethics@ethics.ok.gov](mailto:ethics@ethics.ok.gov) or Oklahoma Ethics Commission, 2300 N. Lincoln Boulevard, G-27, Oklahoma City, OK 73105.

PHILLIPS MURRAH IS LOOKING FOR AN EXECUTIVE DIRECTOR, whose role involves all aspects of Firm Management. The ED is an ex-officio member of the Firm's Executive Committee and attends all meetings. The ED has responsibility for all Staff and office functions. The ED is responsible for all firm insurances, including negotiation and implementation. The ED is responsible for delinquent accounts receivable. The ED meets weekly with the Firm's Marketing and IT Directors to review issues/progress on projects. The ED has a good understanding of and monitors the Firm's financial health, working with the CFO. Salary will be determined based on qualifications; the Firm provides excellent benefits. Please submit your resume to [mamunda@phillipsmurrah.com](mailto:mamunda@phillipsmurrah.com) – NO CALLS PLEASE.

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](mailto:jordan.r.bennett.mil@army.mil).

## 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

DISTRICT 9, COMPOSED OF PAYNE AND LOGAN COUNTIES, is seeking a First Assistant District Attorney. This must be a seasoned trial attorney with significant experience in homicides (first chair) and other major crimes who enjoys trying cases. The right prosecutor will have experience in management and/or administration or other leadership activities. He/she must get along well with others and be committed and dedicated to the mission of the District Attorney system. This person would be the right hand of the District Attorney, be able to see issues and take the initiative, and develop working relationships with all staff. Must have a respected relationship with the judiciary, defense bar and colleagues that demonstrates integrity, skill and sound legal analysis. Salary is negotiable and based on experience, commitment to District 9 and crime victims. Please send resume and references to Scott.staley@dac.state.ok.us. Need is immediate.

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

LATERAL PARTNER/SENIOR ASSOCIATE ATTORNEY. Cavin & Ingram, P.A., a growing boutique natural resources and energy firm, is currently seeking one or more lateral partner(s) or senior associate(s) with 5 to 15 years' experience in business, commercial, energy and/or real estate litigation or transactions. The ideal litigation candidate would be able to bring some existing clients, while stepping in to lead existing firm litigation matters and building the practice they want. The ideal transactional candidate would be able to transition their experience into drafting energy-related transactional opinions and documents. The candidate(s) must be licensed, or willing to become licensed, in the state of New Mexico, and have excellent legal writing, research, and verbal communication skills. Come join our collaborative, flexible, and relaxed work environment. To be considered for this opportunity, please email your resume to smorgan@cilawnm.com.






## NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of District Judge for Lincoln County in the Twenty-third Judicial District, encompassing Lincoln and Pottawatomie Counties. This vacancy is created by the resignation of the Honorable Traci Soderstrom, effective February 9, 2024.

To be appointed as District Judge for Lincoln County, one must be a legal resident of Lincoln County at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms may be obtained online at [okjnc.com](http://okjnc.com) or by contacting Gina Antipov at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, April 5, 2024. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before April 5, 2024 to be deemed timely. Applications should be mailed/delivered to:

Jim Bland, Chairman  
Oklahoma Judicial Nominating Commission  
c/o Gina Antipov  
Administrative Office of the Courts  
2100 N. Lincoln Blvd., Suite 3  
Oklahoma City, OK 73105



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# The Greatest Time to Practice Law in Indian Country

By Robert Don Gifford

**O**KLAHOMA AND ITS 39 tribal nations have been on the cutting edge of Native American law, including the biggest “Indian Country” case, *McGirt v. Oklahoma*. The recent reemergence of Indigenous law has also mirrored the reawakening of Native American influence on pop culture. From the 1950s through the mid-1980s, the general public’s perception of the “American Indian” was limited to Tonto, dressing up like Pilgrims and “Indians” during elementary school Thanksgiving celebrations and television concluding nightly with an anti-littering campaign and a slow tear rolling down the face of “Iron Eyes Cody” (who was not actually Native but of Italian descent). The late 1980s and ‘90s made the average American feel more culturally aware after going to the movie theater to watch Val Kilmer in *Thunderheart*, Daniel Day-Lewis in *The Last of the Mohicans* and, of course, Kevin Costner’s *Dances with Wolves*. Today, Oklahoma’s tribal nations have once again prominently taken center stage with the best-selling book and the star-studded movie *Killers of the Flower Moon* and Hulu’s *Reservation Dogs*.

Outside of pop culture, Oklahoma’s tribes steadily forged their way forward in both commerce and the law. Tribal gaming evolved out of bingo halls and exploded into modern casinos and resorts. Tribal



Tribal Judges Robert Don Gifford (Cherokee) and Lisa Otipoby (Comanche). Photo by Nicole Miskovsky Gifford.

governments became more visible as their business ventures grew beyond the “smoke shops” and bingo halls to modern casinos and resorts, banking, defense contracting and even filmmaking. Even bigger are the tribes’ contributions to funding public schools, building roads, making both water and broadband internet accessible and offering vaccines to Native and non-Native alike during the pandemic.

While this public perception has evolved, lawyers have been quietly fighting battles for decades in the Supreme Court with tribal sovereignty being recognized. From the 1903 Kiowa case of *Lone Wolf v. Hitchcock* (criminal jurisdiction), the *Citizen Band Potawatomi* and *Sac*

and *Fox* cases with victories over the Oklahoma Tax Commission and the 2005 tribal victory in *Cherokee Nation v. Leavitt* in demanding Congress fulfill its health care obligations. The biggest came in 2020 when Oklahoma was told by the U.S. Supreme Court that more than half of its counties were on a reservation in the poetic *McGirt* decision (and its progeny). The state also received its own Supreme Court victory with newfound Indian Country prosecutorial powers in the controversial *Castro-Huerta*.

Whether in tribal, state or federal court, there has never been a better time than right now to be a lawyer who works with the tribes and tribal members. What many Oklahoma lawyers may not realize, however, is that *McGirt* has now expanded into their own legal practices as well. Regardless of the area of practice, every lawyer’s professional obligation to stay competent must now include an analysis of the implication of the *McGirt v. Oklahoma* decision.

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