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# THE OKLAHOMA BAR Journal

Volume 95 — No. 5 — May 2024



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## FEATURED SPEAKERS:

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## ARRIVAL - SUNDAY, DEC. 8

Transportation to hotel  
from airport

## SUNDAY, DEC. 8, 7 P.M.

Informal Meet and Greet  
at the hotel

## MONDAY, DEC. 9, 8-10 A.M.

Lawyers in Film: The Good, the  
Bad and the Unethical (2 Ethics)

## MONDAY, DEC. 9, 10:15-12:30 P.M.

Identifying Traumatic Brain and  
Spinal Cord Injuries:  
Distinguishing Genuine Cases  
from Simulation

## TUESDAY, DEC. 10 - FREE DAY

## WEDNESDAY, DEC. 11, 8-9 A.M.

Mass Shootings in America

## WEDNESDAY, DEC. 11, 9:15-10:15 A.M.

Preventing Fraud on Your Firm

## WEDNESDAY, DEC. 11, 10:15-11:15 A.M.

Truths About Business  
Development for Law Firms

## WEDNESDAY, DEC. 11, 11:30-12:30 P.M.

Legal Outsourcing to Foreign  
Support: Benefits and Pitfalls

## WEDNESDAY, DEC. 11, 4 P.M.

Alma by Rhythms of the  
Night Excursion

## THURSDAY, DEC. 12 - FREE DAY

## FRIDAY, DEC. 13, 8-9 A.M.

Lawyers and Evolving Cannabis  
Laws

## FRIDAY, DEC. 13, 9-10 A.M.

Mental Health for Lawyers

## FRIDAY, DEC. 13, 10:15-11:15 A.M.

Concussions and the  
Legal Landscape

## FRIDAY, DEC. 13, 11:30-12:30 P.M.

Working Relationships:  
Keeping Sanity in the Office

## SATURDAY, DEC. 14

Transportation to airport provided

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# THE OKLAHOMA BAR Journal

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Editor: Melissa DeLacerda

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# 20 Years Later: Time for an OBA Dues Increase

By Miles Pringle

**I**N MY JANUARY ARTICLE, I laid out three main goals for the year. One of them was to evaluate the financial future of the Oklahoma Bar Association and the appropriateness of a dues increase. The House of Delegates last voted to raise dues 20 years ago, in 2004, to the current \$275 amount, which would equate to approximately \$445 in 2023 and likely more today as inflation persists.

In 2004, the OBA dues increased by \$100, from \$175 to \$275. That 57% increase was the first increase in 15 years. Then-OBA President Harry Woods commented, "It is remarkable that the association has gone as long as it has without a dues increase." At the time, the 57% increase was viewed as necessary to "maintain or modestly improve the level of programs and services."

I think the 2004 House of Delegates would be pleased with the results of their investment in the OBA. With that investment, which has lasted 20 years, the OBA has been able to advance its technology and programs that improve the administration of justice in this state, and the quality of services provided to attorneys has been greatly improved.

Based on the information provided by the professionals on the OBA staff, the Board of Governors is making a recommendation to the House of Delegates that the OBA dues be raised by \$125 (from \$275 to \$400). This 45% increase is a lesser percentage increase from 2004 and below the value of \$275 in 2004. The OBA has been able to do more with less over the past several years, but the time has come when there are no practical efficiencies to be gained, and we jeopardize the mission of the OBA by not raising dues.

The Board of Governors was presented with four different dues increase scenarios: 1) \$25, 2) \$75, 3) \$125 and 4) \$175. To be blunt, the first two scenarios were not reasonable options. Cash flow projections for a \$75 increase showed the OBA losing money (*i.e.*, drawing on its strategic reserve) every year. In the best projected year, 2025, the OBA was predicted to lose \$218,534. There is no point in raising dues that do not put the OBA in a financially stable position.

The board had a very robust discussion regarding a \$125 increase as opposed to a \$175 increase. A \$125 increase puts the OBA in what I would categorize as a financially stable position through at least 2029 (barring unforeseen circumstances). The \$175 increase would put the OBA in a positive position through 2031 and potentially allow for investments in big-ticket items.

The first motion for the board to vote on was for a \$175 increase, which failed by one vote. While I personally supported a \$125 increase, there were many strong arguments that a \$175 increase was the better and more prudent option. I voted for a \$125 increase because it stabilizes the OBA's financial position with the least amount of cost to lawyers in the medium term. Also, if there are big-ticket items in the next three to five years, we can discuss how to properly fund those investments at that time.

Regardless, future Board of Governors members will need to be very mindful of the OBA's finances. We have more members over the age of 80 than under the age of 30, which will cause increased pressure on the OBA. Additionally, while we hope that inflation continues to be controlled, there is no doubt

*(continued on page 79)*



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# Reexamining Nesbitt: How Horizontal Wells Have Changed Pooling in Oklahoma Oil and Gas Law

By Ronald Merrill Barnes, Grayson Merrill Barnes and Denver Morrissey Nicks

**I**N 1979, THE OKLAHOMA BAR JOURNAL PUBLISHED AN ARTICLE titled “A Primer on Forced Pooling of Oil and Gas Interests in Oklahoma,” which detailed the intricacies and applications of the state’s forced pooling statute. Authored by Oklahoma attorney Charles Nesbitt, the article may have had an unassuming title, but its effect was anything but modest. In the years since it first appeared, Mr. Nesbitt’s primer on forced pooling has become extremely influential. Decisions of the Oklahoma Corporation Commission (Corporation Commission) on pooling matters frequently cite the piece and generally mirror Mr. Nesbitt’s positions.

Reports of administrative law judges and referees routinely cite Mr. Nesbitt’s article as the authority for decisions on fair market value determinations, selections of operators and other matters related to forced pooling. Thus, when appellate courts cite the Corporation Commission in their decisions, they are very often adopting Mr. Nesbitt’s positions into case law. Perhaps that level of impact was to be expected from an article authored by a Yale-educated lawyer who served as the state’s attorney general before spending seven years as a member of the Corporation Commission, nearly all of them as its chair.

Mr. Nesbitt defined forced pooling thusly: “The law provides that where there are separately owned tracts, or undivided interests, or both, within an established spacing unit, and the owners have not voluntarily agreed upon joint development, and one owner proposes to drill a well on the unit, the Corporation Commission may ‘require such owners to pool and develop their lands in the spacing unit as a unit.’”

While that description remains as serviceable today as ever, and Mr. Nesbitt’s 1979 article has remained influential, the energy industry has changed considerably in the 40-plus years since the article

first appeared in print. Many of those changes have direct ramifications on some of Mr. Nesbitt’s assumptions and conclusions, particularly with respect to well spacing, correlative rights, operator selection and, most importantly, the doctrine of waste. Some of these changes relate to the development of case law, in which questions of law that had not been definitively answered in 1979 are settled today, while others reflect changes to the standard terms now common in pooling orders and operating agreements reached privately between the parties. Technological changes since Mr. Nesbitt wrote his seminal article – most notably

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the advent of horizontal drilling – have upended some of his basic presuppositions, which warrants reconsideration of his core conclusions. This article will revisit the landscape of forced pooling in Oklahoma, see where Mr. Nesbitt’s piece remains relevant and explain where it’s in need of an update.

But first, let us consider a question, the answer to which will form the foundation for the rest of this article:

### WHY DOES THE CORPORATION COMMISSION REGULATE OIL AND GAS IN THE FIRST PLACE?

The mayhem in the early years of oil and gas production in Oklahoma was aptly captured by one historian describing the scene after an oil field was discovered under Oklahoma City in 1928: “wild wells, floods of crude, and almost uncontrollable flows of natural gas.”<sup>1</sup>

It is this state of affairs that the Corporation Commission was tasked with bringing under control – massive overproduction, barrels of wasted oil, mere black sludge on the ground, some untold amount left unrecoverable beneath the surface and natural gas escaping freely into the air.

The power of the Corporation Commission to regulate the exploitation of subsurface oil and gas deposits is premised upon the United States Supreme Court’s 1877 decision in *Munn v. People of State of Illinois*, in which the court recognized the sovereign authority of state governments to regulate private industry within their borders when that industry is of a kind that affects the public interest.<sup>2</sup> *Munn & Scott* had been found liable for violating a

properly enacted statute that set maximum rates for the storage and transportation of grain.<sup>3</sup> In upholding *Munn & Scott*’s conviction, the court held that the state of Illinois had properly exercised its inherent police power to regulate the use of private property when such use will be “of public consequence, and affect the community at large.”<sup>4</sup> Chief Justice Morrison Waite – a former corporate and railroad lawyer<sup>5</sup> – wrote for the court, stating, “When one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.”<sup>6</sup>

Importantly, Justice Waite found support for the court’s position in the very foundations that underlie all human society and governance. The social contract, he wrote, implicitly authorizes “the establishment of laws requiring each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another. This is the very essence of government and has found expression in the maxim *sic utere tuo ut alienum non laedas*,” the Latin maxim meaning that one ought not use that which is his in such a way as to harm that which is someone else’s.<sup>7</sup> “From this source,” writes Justice Waite, “come the police powers.”<sup>8</sup>

For the founding generation of the early republic who laid the foundations of our legal traditions and political culture – most of it imported wholesale from Britain – the terms *police* and *economy* were effectively interchangeable.<sup>9</sup> As is ever the case, we can look to the same place the founders looked –

the authoritative English jurist Sir William Blackstone – to better understand the concept of the police power and how it is meant to fit into the greater American polity, to wit: “By the public police and oeconomy I mean the due regulation and domestic order of the kingdom: whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious, and inoffensive in their respective stations.”<sup>10</sup>

Mr. Blackstone’s deployment of the metaphor of a well-governed family is no accident. As Mr. Blackstone well knew,<sup>11</sup> the very idea of economy comes to us from the ancient Greeks, for whom economy meant “government of the household for the common good of the whole family.”<sup>12</sup> Hence Mr. Blackstone’s odd-to-modern-eyes spelling of the word with an “o” up front: *oeconomy*, from the Greek *oikos*, meaning house, and *nomos*, meaning law.

Thus, the government’s power over police and economy is essentially and inextricably paternalistic, albeit in a rather more positive sense of the word than that to which the modern ear is accustomed; the police power is a power that, according to the very most fundamental ideas that underpin Western civilization, ought ever to be directed toward the betterment of the common good, in the same way a father looks after the well-being of his entire family.<sup>13</sup>

The Corporation Commission was created by Article 9 of the Oklahoma Constitution to exercise the state’s police power – the power to regulate private industry for the public good.

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The Oklahoma Legislature gave teeth to this purpose in the domain of oil and gas when, in 1915, it passed the Oil and Gas Conservation Act, specifically conferring upon the Corporation Commission the power to regulate oil and gas drilling in the state for “the protection of the rights of all parties entitled to share in the benefits of oil and gas production.”<sup>14</sup>

To the 21st-century reader, the Oil and Gas Conservation Act of 1915 has a rather misleading name in that its purpose is not to conserve resources in the sense of preventing their exploitation but to conserve them in the sense of ensuring their full – *i.e.*, not wasteful – exploitation. The act directs the Corporation Commission to regulate the industry so as to ensure that oil and gas stays in the ground until it “can be produced and utilized without waste.”<sup>15</sup> The act is careful to establish that, in addition to its ordinary meaning, the word *waste* in the statute refers also to “economic waste, underground

waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands.”<sup>16</sup> Waste, as defined by the statute, is not only oil that may spill onto the ground or gas that escapes into the air, it is also underground waste, oil and gas that could technically be extracted but instead is left in the ground by a producer, as well as economic waste, hydrocarbons extracted at too high a cost or sold at too low a price to be financially advantageous to mineral owners, operators and the tax-funded state coffers.

In 1947, as part of the ongoing effort to minimize waste and encourage the full development of the state’s mineral resources, the Oklahoma Legislature passed the forced pooling law.<sup>17</sup> The law provides that where there are separately owned tracts or undivided interests within a spacing unit and the mineral and/or leasehold owners have not agreed on joint development and one owner proposes to

drill, the Corporation Commission can require owners to pool and develop their interests all together, as a unit.<sup>18</sup>

In 1943, in the case of *Hunter Co. v. McHugh*, the United States Supreme Court upheld the constitutional power of a state “to regulate production of oil and gas so as to prevent waste *and* to secure equitable apportionment among the landholders.”<sup>19</sup> Here, we have an instance of an extremely important three-letter conjunction: *and*. The purpose of the power is to prevent waste *and* secure benefits to landholders – two separate purposes. If the latter is a benefit to landholders, then to whom is the former a benefit?

The Oklahoma Supreme Court provided a direct answer to that question in 1957 when it held, “To curtail over-production and waste *for the benefit and protection of the general public*, restraints had to be placed around the individual’s rights to develop and produce [oil and gas].”<sup>20</sup> The curtailment

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of waste in the production of hydrocarbons, the Supreme Court said, is a benefit conferred on the general public of the state.<sup>21</sup>

This position is consistent with the purpose of the Corporation Commission: to exercise the state's police power, which is to say, the state's power to regulate the use of private property in the interest of the common good. While mineral owners and oil and gas companies have an obvious pecuniary interest in the development of hydrocarbons, the doctrine of waste points to the interest that all citizens of Oklahoma have in the full development of the mineral resources of the state.

Even decisions that circumscribe the rights and interests of the state acknowledge the state's underlying interest in preventing waste for the common good, including in instances where it has no other claim to a right or interest, to wit: "The state has no title to oil and gas in place, and is without power to appropriate the oil and

gas in and under the lands of one owner to the use and benefit of another owner. *The only interest the state has under its police power is to prevent actual waste* and to provide equal privileges to every landowner to reduce such products to possession and place them in the channels of legitimate commerce."<sup>22</sup> The United States Supreme Court has similarly endorsed the idea that, where they are in conflict, certain public interests (such as the prevention of waste in oil and gas production) take precedence over private property interests.<sup>23</sup>

The plain fact that the doctrine of waste exists to protect the interests not merely of mineral owners but of all Oklahomans was once self-evident. The Oklahoma Supreme Court said as much in terms that could hardly be clearer when it held in 1933: "Gas energy should be preserved and properly utilized in order to extract all of the oil from oil-bearing sands. This theory recognizes the interest of the state in the proper utilization of all

its resources. After all, such theory is particularly proper in Oklahoma, because oil and gas constitute to a large degree the basic wealth of the state. *This basic wealth and basis of taxation and income should not be wasted. The waste of any natural resource that cannot be replaced should be and is against public policy.*"<sup>24</sup>

Resting, as it does, on the police power, the mandate of the Corporation Commission is thus to regulate those businesses in which the general public has an interest in such a way as to benefit the general public. With respect to the Corporation Commission's jurisdiction over the oil and gas industry, that amounts to the prevention of waste and protection of correlative rights.<sup>25</sup>

## SPACING AND POOLING ORDERS

In some respects, little has changed since 1979 concerning the pooling of hydrocarbons for development. Mr. Nesbitt wrote that in "simplest terms, the pooling order offers the non-consenting owner of oil and gas rights a choice either 1) to pay his proportionate share of the cost of the well and receive the same share of the working interest; or 2) to receive a bonus in lieu of the right to participate in the working interest of the well." That remains broadly true, though these days, an irrevocable letter of credit satisfactory to the operator securing the payment is often included among the options, as is a no-cash, higher royalty alternative. Pooled mineral owners are entitled to know how much it will cost to participate in the well if they elect to do so and what bonus (or other consideration) they will receive if they do not. Though so-called "back-in" interest arrangements were once an option commonly

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offered to owners, they are virtually nonexistent these days.<sup>26</sup>

Pooling orders specify the deadlines for certain events, like the number of days in which an owner must elect to participate or not, and many of these time frames have changed since Mr. Nesbitt's article was published over 40 years ago. A pooled mineral owner now has 20 days (formerly 15) in which to elect to participate in the well or receive an option in lieu of participation, a participating owner now has 25 days (previously 20 days) to pay their portion of the well cost, and an operator now has 35 days (formerly 30 days) to pay the bonus to a non-participating owner. In the 1970s, the Corporation Commission very seldom allowed an operator to begin drilling a well more than 120 days from the issuance of a pooling order, but because of the technical complexity involved, fractional ownership and the unpredictable availability of rigs and rig hands, operators today are frequently allowed up to a full year to commence the initial horizontal well. Even that deadline can be extended for good cause, though if an extension is granted, the operator is typically required to increase the size of the bonus by an amount proportionate to the number of days the order is extended as compared to the total days to commence operations under the original order. Also, no new election is authorized under the extension.

Well into the 1980s, it was uncertain whether each pooling order covered only a single wellbore or an entire spacing unit, regardless of how many wells were drilled within the unit into the pooled common sources of supply. In order to clarify its position on this issue, the Corporation Commission

enacted a policy declaring each pooling to be for a single wellbore, not the unit. The Court of Civil Appeal's decision in *Amoco Production Company v. Corporation Commission* put an end to that practice, holding that a pooling must be done by the unit, not the wellbore, which remains the law today.<sup>27</sup> Because the courts have concluded that poolings are by the unit, not the wellbore, pooling orders subsequent to the *Amoco* decision include language concerning elections in subsequent wells.

During the turbulent early years of Oklahoma's oil boom, oilmen drilled wells nearly on top of one another in a mad race to suck as much black gold from the ground as possible faster than the competition. Thus, in Mr. Nesbitt's day, as it is today, one of the chief ways regulators went about preventing waste was by limiting the number of wells allowed in any given area. Spacing units for oil formations less than 4,000 feet deep were capped at 40 acres and 80 acres for formations between 4,000 and 9,990 feet deep.

Properly spacing wells is still an important consideration, but horizontal drilling has radically changed the calculus by adding to the types of reservoirs that can be developed and increasing the amount of reserves that can be recovered by a single well. Consequently, spacing units in today's energy environment have dramatically increased in size – up to 1,280 acres for horizontal wells comprised of multiple sections.

Horizontal drilling has introduced novel challenges too numerous to address in full in this article, but one challenge of particular concern is what is known as the “parent-child effect,” which can

have a detrimental impact on all wells throughout an entire spacing unit. This pernicious phenomenon can occur when an operator does not drill, frack and open for production multiple horizontal wells in a spacing unit all at once (“batch drilling” is the industry term for the practice of drilling multiple wells together, and “simultaneous completion” is the industry term for completing, fracking and producing the wells at the same time) and instead waits to assess the productive capacity of the first well before drilling additional wells. When drilling horizontally in this way, the first well can alter subsurface conditions – for example, by depressurizing the area around the “parent” well – such that the efficacy of fracks on subsequent “child” wells is reduced. The “child” wells, in turn, sap the vitality of the preexisting “parent” well. The productive capacity of all wells in a spacing unit is thus likely to be diminished when wells in the unit are not drilled and fracked together so as to maintain underground pressure until the wells are turned on in unison. The net result is a waste of hydrocarbons left in the ground that would have been recovered had the wells been batched drilled and simultaneously completed.<sup>28</sup>

Due to the potential harm of the parent-child effect, merely ensuring that wells are spaced a certain distance from one another can be an insufficient means of fulfilling the Corporation Commission's all-important directive to minimize waste. Instead, a comprehensive development plan may be required, wherein all the wells planned for a spacing unit are batch drilled and simultaneously completed, which can affect how well cost is tabulated and allocated.

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Mr. Nesbitt wrote that a pooling order “specifies the individual formations pooled and the well cost ordinarily is calculated to the deepest formation to be tested.”<sup>29</sup> Though that remains broadly true, when a unit is batch drilled, calculations of well cost in the pooling order must take into account all of the planned wells at the outset. On the other hand, batch drilling generally results in significant cost savings on the whole, an additional consideration today’s pooling orders must consider.

Horizontal drilling and the creation of multiunit horizontal wells have also changed the way royalties are allocated. When a multiunit horizontal well crosses a section line, the amount of royalty allocated to royalty owners in a section corresponds to the proportion of the completion interval – the segment of a horizontal pipe that is perforated to allow for the flow of hydrocarbons – in the lateral in that section. So, for example, if a hypothetical horizontal well cuts across two units and three-fourths of the completed lateral portion of the well is in one unit and one-fourth is in the adjacent unit, royalties and costs alike would be allocated in equivalent proportions (75% and 25%, respectively).

Another novel issue that did not exist before the introduction of horizontal drilling is the practice of drilling the downhole portion of the well by starting outside the unit. This presents the question of whether or not it is necessary to lease some part of the minerals drilled offsite and the question of whether information learned from the offsite hole is the property of the mineral owner(s) to whom none of the well’s actual production will be attributed. This matter

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Because of the complexity involved in horizontal drilling and, in many cases, efforts to curtail the parent-child effect, the relative competence of an operator is a more important consideration today than it was in the days when wells were only drilled vertically.

remains unresolved but is likely to be taken up by courts in the coming years.

Fair market value (FMV) as a legal term has the same meaning it did when Mr. Nesbitt defined it as “the bonus which would be paid for a lease between willing contracting parties, neither under compulsion.”<sup>30</sup> However, the advent of multisection units has necessitated changes in how FMV is calculated. For instance, the sheer size of today’s spacing units encompasses more units in the calculation. Traditionally, FMV takes into consideration the amounts paid to mineral owners in a unit and the surrounding units in the past year. Larger spacing units have a larger perimeter, which means there are more surrounding units to bring into the calculus. Multiunit transactions are excluded from the determination of FMV, as are transactions made by third parties for lands in the unit to be pooled after the filing of the pooling. Any transactions that do not qualify as “arm’s-length transactions” under

the law likewise are not considered when determining FMV.

The mechanics of horizontal drilling have also led to a change in what exactly is pooled in a pooling order. In a vertical well – which is to say all wells in Mr. Nesbitt’s day – all the subsurface spaced and named zones in the pooling above the deepest point of the well (uphole zones) are included in the pooling, and the operator is thus able to complete whatever uphole portions of the well they choose to. But horizontal wells work differently. They are rarely, if ever, constructed in a manner such that it is technically feasible to complete for production the uphole zones from the target zone of the lateral component of the well. Thus, in a pooling for a horizontal well, operators are only permitted to pool, at most, the target zone and the zones directly above and below it. Unlike the operators in Mr. Nesbitt’s day, today’s operators do not get to hold all the uphole zones in a well. Because a pooling order for a horizontal well

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does not automatically include every zone spaced between the surface and the target zone, when a unit has prior production, parties being pooled have the option of electing in or out of pooled zones. For example, if zones one and two are pooled, parties have the option of electing to participate in zone two (the deeper zone) while electing out of zone one, or they can elect out of both zones. A party is only entitled to receive the portion of the FMV allocated to zones they elect out of. So, in the above scenario, if zone one is allocated 40% of the bonus and zone two is allocated 60% of the bonus, the party electing out of zone one and participating in zone two would receive 40% of the FMV bonus.

Because of the size of today's spacing units and the fact that pooling is done by the unit rather than the wellbore, more often than not, operators know before they ever start drilling in a unit that it will require multiple wells to fully develop the unit. Operators may reduce the bonus associated with subsequent wells, as each well reduces the remaining reserves available to wells that follow. Only a party that participated in the initial well has the right to elect differently in a proposed subsequent well. Additionally, only an owner who continues to elect and properly participate in a subsequent well maintains the right under a pooling order to elect differently in future wells. Once a party elects out of a subsequent well, that party is out of that well and any subsequent wells that may follow, but they remain in any well they properly elected to participate in, assuming they also properly paid their share of costs.

## DESIGNATING THE OPERATOR

One aspect of Mr. Nesbitt's article that is ripe for wholesale reappraisal, in light of the monumental changes in the way the industry drills for hydrocarbons, is the designation of the operator of a spacing unit subject to a pooling order. In Mr. Nesbitt's time, as he put it, "[a]ll other things being equal, the owner of the largest share of the working interest has the best claim to operations."<sup>31</sup> Other factors to consider, Mr. Nesbitt added, include the extent of an operator's activity in the area, the availability of personnel and facilities, cost comparisons "and, rarely, the relative experience and competence of the contenders for operating rights."<sup>32</sup>

Due to the innovation of horizontal drilling – with its added complexity and the potential of triggering the parent-child effect – this is no longer necessarily true. While the relative size of a proposed operator's ownership stake in the working interest is still an important consideration, all other things are rarely equal.

Because of the complexity involved in horizontal drilling and, in many cases, efforts to curtail the parent-child effect, the relative competence of an operator is a more important consideration today than it was in the days when wells were only drilled vertically. Furthermore, taking waste into account, it works differently today than it once did.

In Mr. Nesbitt's list of factors to consider when designating an operator, the primacy of waste as a consideration was merely implied. In 1979, it could be presumed that the operator with the greatest working interest ownership (*i.e.*, the greatest investment in the

outcome), the most wells in the vicinity, the highest availability of personnel, etc. would operate the well most effectively and efficiently – which is to say, with the least amount of waste. Today, however, because of horizontal drilling, the parent-child effect and other potential problems, an operator often must devise a plan that accounts for waste from the very beginning and make highly consequential decisions that weigh the cost of extracting reachable hydrocarbons against the value of doing so in light of the operator's unique financial situation. One operator may assess that the return on investment of extracting a certain amount of recoverable oil and gas, though still profitable, would not be profitable *enough* and choose to leave it in the ground, whereas for another operator, extracting that extra amount might be a worthwhile investment. Here, waste becomes a consideration unto itself in a way it was not before. Mr. Nesbitt's other factors should still be taken into account when designating an operator, but because the Corporation Commission's reason for being – as it relates to hydrocarbons – is to minimize waste for the benefit of all Oklahomans, the proposal that will result in the least amount of waste naturally ought to receive preferential consideration.

The role of private agreements in selecting the operator following a pooling is another subject ripe for appellate review. At the outset of a pooling, it is the Corporation Commission's responsibility to select an operator based on the various considerations detailed above. But it has long been industry practice that a pooling order is a bare-bones document, lacking

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many terms that may be included in a more detailed private agreement executed after the pooling order is in place, such as, for instance, terms that govern succession of operator. As Mr. Nesbitt wrote, “Such an operating agreement will effectively supersede the pooling order, especially as to its many detailed provisions which are not detailed in a pooling order.”<sup>33</sup> As stated previously, private agreements are contracts that implicate the private rights and obligations of parties to the agreement, and the power to adjudicate matters related to private agreements properly belongs to the district courts, as expressed by the Oklahoma Supreme Court in *Tenneco Oil Co. v. El Paso Nat. Gas Co.* Though this remains true, in recent years, reports of the Corporation Commission have at times asserted that the power to select an operator belongs solely to the Corporation Commission in every instance, regardless of the existence of a private agreement that dictates the succession of operator between the parties to the agreement. This position would seem to contravene Mr. Nesbitt’s assertion – as true today as it was when he made it in 1979 – that private operating agreements supersede the pooling order with respect to terms not addressed in the order, as well as exceed the Corporation Commission’s jurisdictional mandate to decide matters involving public, not private, rights.

## JURISDICTION

Identifying the precise boundaries of the Corporation Commission’s jurisdiction is a persistent and recurring point of controversy, and for good reason. Determining whether the power to

decide an issue properly belongs to the district courts, tribunals of general jurisdiction that exist to resolve controversy, or the Corporation Commission, an administrative body with quasi-judicial authority of limited jurisdiction that exists to exercise the state’s police power, can have a significant influence on the outcome of a dispute.<sup>34</sup>

Mr. Nesbitt notes that certain legal questions around orders and costs – namely regarding the enforceability of the Corporation Commission’s judgments and whether or not they are binding on district courts in litigation arising out of a dispute over costs – remained, at the time, unsettled. Oklahoma’s appellate courts have since issued decisions to offer some clarity around these and other issues.

In *Gulfstream Petroleum Corp. v. Layden*,<sup>35</sup> the Oklahoma Supreme Court stated with refreshing finality that the Corporation Commission’s decisions regarding costs are indeed binding on district courts, holding that, except with respect to inquiries into the Corporation Commission’s jurisdiction, “[g]enerally, the district courts of this state lack the jurisdiction to even inquire into the validity of [Corporation Commission] orders.”<sup>35</sup>

This is not to say that the district courts are powerless in matters related to the Corporation Commission. In *Tenneco* and other cases in its lineage, the Oklahoma Supreme Court delineated the boundaries of the jurisdictional tug-of-war between these two fonts of judicial authority. In keeping with the Corporation Commission’s essential purpose as it relates to oil and gas – that being, in simplest terms, the protection of correlative rights and prevention of waste –

the Corporation Commission holds sway when public rights are at issue, such as in questions regarding spacing orders, pooling orders and other “enactments for the conservation of oil and gas.”<sup>36</sup> Furthermore, “the power to clarify or interpret any Commission order” in its aspects that implicate public rights rests squarely with the Commission.<sup>37</sup> Meanwhile, private rights, including – in at least some respects – interpreting Corporation Commission orders, are the province of the district courts, to wit: “Respective rights and obligations of parties are to be determined by the district court.”<sup>38</sup>

In *Toklan Oil & Gas Corp. v. Citizen Energy III, LLC*, one party accused the other of transferring ownership of a sizable overriding royalty interest to a third party with the purported intention of so burdening the leasehold as to make developing it financially nonviable for the other party. Without addressing the ultimate issue of whether or not the party was hindering development (*i.e.*, causing waste) by transferring ownership of an override for a dubious purpose, the Oklahoma Court of Civil Appeals held that “the Commission does not have jurisdiction to alter the ownership of royalty or to shift royalty away from the party taking the working interest pursuant to a pooling order.”<sup>39</sup> Were the Corporation Commission to do so, it would be adjudicating matters of contract, which is to say matters of private rights, which would exceed the bounds of its limited jurisdiction.

## NOTICE

One significant and conspicuous change in the law since Mr. Nesbitt’s article was published

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has to do with notice requirements. Mr. Nesbitt wrote in 1979 that “[n]either law nor policy requires prior contact to other lease owners” before initiating a pooling proceeding.<sup>40</sup> Today, 52 O.S. §87.1(e) requires that an applicant first make a bona fide effort to reach an agreement with lease owners and explicitly requires that notice be attempted by mail with return receipt requested as well as published in a newspaper of general circulation in Oklahoma County and in some newspaper, at least 15 days prior to the date of the hearing, in the county (or in each county if there is more than one) in which the lands embraced within the spacing unit are situated. Furthermore, efforts to give notice to landowners must be more than merely perfunctory. In *Harry R. Carlile Tr. v. Cotton Petroleum Corp.*, a case involving notice requirements in a spacing proceeding before the Corporation Commission, the Oklahoma Supreme Court held that notice by publication in a periodical was inadequate in that instance.<sup>41</sup> Today, it may be inadequate for any purpose, at least in the absence of

more robust attempts to contact a landowner. In 2020, the Oklahoma Supreme Court held in *Purcell v. Parker* that when “affected landowners are known, or reasonably discoverable, notice provided by publication results in an unconstitutional exercise of jurisdiction and a denial of due process.”<sup>42</sup>

What precisely happens once notice has been given – or is supposed to happen, particularly with respect to the offer of a private agreement versus forced pooling – has become a tricky question of late, and an apparent conflict between law and custom suggests that the matter may require judicial attention in the coming years. However, the law appears on its face to require that operators make a good faith attempt to reach a private accord with mineral owners before subjecting them to forced pooling. Since the early 2000s, operators have tended to make less than vigorous efforts to reach such agreements before resorting to pooling, and the joint operating agreement (JOA) of old is rarely seen today. Instead, operators often send owners a bare-bones well proposal with

terms identical to those in the forced pooling, in effect offering mineral owners the option of being pooled by election or pooled by force, a distinction without a difference if ever there was one. Appellate courts have yet to weigh in on the validity of the practice.

## COMMISSION PROCEDURE

The procedure followed during proceedings at the Commission is, in broad strokes, largely the same as it was in Mr. Nesbitt’s day, but there have been significant changes as well.

As in Mr. Nesbitt’s day, the majority of conservation applications are still uncontested, and procedure, as it regards uncontested applications, is little changed – uncontested cases are heard the day the notice sets them for hearing. Contested cases, on the other hand, are another matter.

Today, contested cases are heard Wednesday through Friday on a docket dedicated solely to protests – an innovation that allows more time for the responding party to prepare for a protested proceeding. Prior to the hearing, a pre-hearing conference agreement is filed setting out the issues, stipulations, timeline for exhibit exchanges and witness lists. In many cases, once an application has been heard as a protest, the prevailing party prepares the initial draft of the report and submits it to the administrative law judge (ALJ, a position called the trial examiner in Mr. Nesbitt’s day), who reviews the report, makes changes as they may deem appropriate and then files it. A nonprevailing party can still take exception to the report, in which instance the commissioners usually remand the case to an



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Thanks to the companies and individuals who spend hundreds of millions of dollars drilling horizontal wells within our state and groundbreaking advancements in drilling technology in recent years, we have seen a wonderful resurgence of productivity in Oklahoma's hydrocarbon deposits.

appellate referee. If the nonprevailing party is unsuccessful at that stage, they can again request that the Corporation Commission take up their appeal for an en banc hearing, though the commissioners rarely grant such requests. Unlike the ALJs and referees, when the commissioners do take up an appeal, they can make a decision without hearing new arguments from either side.

## CONCLUSION

The Oklahoma Corporation Commission has an enormous job with great responsibility. Those who come to the Corporation Commission to do their business have invested millions of dollars in oil and gas exploration, and the success or failure of their investment depends, in part, on decisions made by the Corporation Commission on a daily basis. The Corporation Commission helps generate millions of dollars of revenue for owners of oil and gas rights

and millions more in taxes that fund Oklahoma's state coffers. The Oklahoma Policy Institute reported in August of this year that, from May 2022 to May 2023 alone, taxes collected from oil and gas production totaled \$1.91 billion, providing a vital source of funding for schools and state and local government alike. One percent of all gross production taxes is returned to the counties and schools where the wells are located, and the remaining revenue goes to the state.<sup>43</sup> The Corporation Commission is tasked with making decisions that encourage oil and gas development, all the while endeavoring to prevent waste and ensure that this precious nonrenewable resource is used for the benefit of all Oklahomans today and in the future.

The other most basic charge to the Corporation Commission is to ensure that all owners get their fair share of proceeds from the production of hydrocarbons produced from minerals owned

by leasehold owners as well as mineral owners. The Corporation Commission works tirelessly to protect the correlative rights of all owners whose minerals are affected by drilling operations.

Thanks to the companies and individuals who spend hundreds of millions of dollars drilling horizontal wells within our state and groundbreaking advancements in drilling technology in recent years, we have seen a wonderful resurgence of productivity in Oklahoma's hydrocarbon deposits. Thanks to the Corporation Commission – including commissioners, technical experts, lawyers, administrative courts and staff – that resurgence of productivity is responsibly managed to prevent waste of hydrocarbons and ensure they are efficiently exploited. Our state continues to be a national leader in both endeavors. With the incredible innovations made over the past 50 years and new innovations sure to be just over the horizon, Oklahoma will remain a leader in bringing dependable energy to the citizens of our state and beyond. We have come a long way since the Oklahoma conservation statutes were first codified, and we expect there remains a long and bright future for Oklahoma's oil and gas industry for many years to come.

It is hard to believe how far the oil and gas industry, in partnership with the Oklahoma Corporation Commission, has come since Mr. Nesbitt's article was published in 1979. In his recent book, *Game Changer*, founder of Continental Resources and pioneering innovator in horizontal drilling Harold Hamm aptly summed up the significance of the horizontal drilling revolution and its effect on all

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our lives: “The horizontal drilling phenomenon has been referred to as a miracle, and it will go down in history as one of the top 10 technological achievements of the 20th century. Horizontal Drilling transformed everything connected to energy.”

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## ENDNOTES

1. Mark Singer, *Funny Money*, 9 Houghton Mifflin Harcourt Publishing (2004).
2. *Munn v. People of State of Illinois*, 94 U.S. 113, 123 (1876).
3. *Id.*
4. *Id.* at 126.
5. Peter Irons, *A People's History of the Supreme Court: The Men and Women Whose Cases and Decisions Have Shaped Our Constitution: Revised Edition* (2006).
6. *Munn* at 126 (emphasis added).
7. *Id.* at 124–25.
8. *Id.*
9. Markus Dirk Dubber, “The Power to Govern Men and Things’: Patriarchal Origins of the Police Power in American Law,” 52 *Buff. L. Rev.* 1277, 1345 (2004).
10. 4 William Blackstone, *Commentaries on the Laws of England* 162 (University of Chicago Press, 1979) (emphasis added).
11. “... forms a part of oeconomics, or domestic polity; which, considering the kingdom as a large family, and the king as the master of it, he clearly has a right to dispose and order as he pleases.” 1 William Blackstone, *Commentaries on the Laws of England* 264 (University of Chicago Press 1979).
12. Jean-Jacques Rousseau, *Discourse on Political Economy, in On the Social Contract with Geneva Manuscript and Political Economy* 209, 209 (Roger D. Masters ed. and Judith R. Masters trans., 1978) (1755).
13. 4 Blackstone, *supra* note 16, at 127.
14. Oklahoma Corporation Commission, “Oklahoma Corporation Commission History,” <https://oklahoma.gov/occ/about/history.html>. Last accessed April 26, 2022.
15. Okla. Stat. tit. 52, §238 (1915).
16. Okla. Stat. tit. 52, §273 (1915).
17. Charles Nesbitt, “Primer on Forced Pooling of Oil and Gas Interests in Oklahoma,” *OBJ* 50, no. 13 (1979): 648-656.
18. *Id.*
19. *Hunter Co. v. McHugh*, 320 U.S. 222 (1943) (emphasis added).
20. *Anderson v. Corp. Comm'n*, 327 P.2d 699, 701 (1957) (emphasis added).
21. *Id.*
22. *Champlin Ref. Co. v. Corp. Comm'n of State of Oklahoma*, 51 F.2d 823, 833 (W.D. Okla. 1931), modified sub nom. *Champlin Ref. Co. v. Corp. Comm'n of State of Okl.*, 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062 (1932) (emphasis added).
23. See *Miller v. Schoene*, 276 U.S. 272, 279–80 (1928) (“And where the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property.”).
24. *Sterling Ref. Co. v. Walker*, 1933 OK 446, 165 Okla. 45, 25 P.2d 312, 316 (emphasis added).
25. *Champlin* at 833.
26. Though once common, “back-in” interest is almost never offered as an option today. “Back-in” interest refers to an arrangement whereby an owner retains an overriding royalty interest until the cost of the well is paid off, at which time the owner has the option to convert the override into a larger working interest. See *Practical Aspects of Examining Title, Preparing Worksheets, Chains of Title, and Document Interpretation*, 2019 No. 4 RMMLF-INST 3, 3-19.
27. *Amoco Production v. Corporation Com'n*, 751 P.2d 203, 1986, modified by Supreme Court order on certiorari Dec. 16, 1987, and adopted as the opinion of the Supreme Court. Rehearing denied Feb. 9, 1988.
28. An in-depth, technical explanation of the parent-child effect can be viewed in a video produced by ResFrac, titled “Results from a Collaborative Parent/Child Industry Study: Permian Basin,” which you can find at <https://bit.ly/3vQOcZY>.
29. Nesbitt at 649.
30. Nesbitt at 650.
31. Nesbitt at 653.
32. *Id.*
33. *Id.* at 654.
34. *Halpin v. Corporation Comm'n*, 575 P.2d 109, 111 (Okla. 1977).
35. *Gulfstream Petroleum Corp. v. Layden*, 1981 OK 56, ¶¶5-6, 632 P.2d 376, 378.
36. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, ¶¶20, 687 P.2d 1049, 1053.
37. Deborah B. Barnes, “Interpretation of Corporation Commission Orders: The Dichotomous Court/Agency Jurisdiction,” 8 *Okla. City U.L. Rev.* 311 (1984).
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40. Nesbitt at 654.
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42. *Purcell v. Parker*, 2020 OK 83, ¶¶24, 475 P.3d 834, 844.
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# Tribal Regulation of the Environment and Natural Resources Under Federal Environmental Laws

By *Conor P. Cleary*

**G**OVERNMENTAL REGULATION OF THE ENVIRONMENT and natural resources traditionally has been described as one of “cooperative federalism.”<sup>1</sup> The federal government is the default administrator of federal environmental statutes like the Clean Air Act or Clean Water Act. But these statutes, and others like them, authorize states to step into the shoes of the federal regulatory agencies and assume responsibility for administering environmental laws. The federal government maintains a supervisory role to ensure the state meets the minimum standards of the federal environmental laws, but otherwise, the state is the primary regulatory sovereign. In this way, the federal and state governments work cooperatively to achieve the goals of federal environmental statutes.

This model of federal-state cooperation, however, can obscure the role of a third sovereign with the power to regulate the environment and natural resources – tribal governments. As this article will explain, most federal environmental laws now contain provisions treating Indian tribes as states and authorizing tribes to be the primary regulators of the environment and natural resources within a tribe’s Indian Country. And even where an environmental law does not treat a tribe as a state or is ambiguous about its application,

tribes still have inherent authority to regulate some uses of natural resources in areas within their jurisdiction.<sup>2</sup>

## THE ENVIRONMENTAL MOVEMENT AND FEDERAL ENVIRONMENTAL LAWS

Congress enacted most of the major environmental laws in the late 1960s and 1970s. Prior to that time, environmental law was a “highly decentralized system built on private law principles.”<sup>3</sup> “[T]he common law was the legal system’s primary vehicle for responding to

environmental disputes[,] ... [relying] largely on doctrines of nuisance law to resolve these conflicts[.]”<sup>4</sup>

By the early 1960s, however, an emerging “[a]wareness that pollutants do not respect state, or even national boundaries, grew rapidly.”<sup>5</sup> Rachel Carson’s *Silent Spring* “began to shift public discourse about the environment ... and was a significant driver in the 1970 formation of the U.S. Environmental Protection Agency.”<sup>6</sup> In the 1970s – known as the “environmental decade” – Congress passed several comprehensive federal environmental

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laws that “established the ground rules for national environmental protection efforts.”<sup>7</sup> For example, the National Environmental Policy Act (NEPA) required federal agencies to evaluate the environmental effects of their actions.<sup>8</sup> The Endangered Species Act prohibited actions that jeopardized threatened and endangered species.<sup>9</sup> The Clean Air Act and Clean Water Act placed limits on air, water and other pollutants.<sup>10</sup> And the Resource Conservation and Recovery Act regulated the disposal of hazardous wastes.<sup>11</sup>

These statutes all have a similar framework. They establish minimum standards for the protection of the environment. The federal

government – typically the Environmental Protection Agency (EPA) – is the default regulator that administers the federal statute and its implementing regulations. The statutes contain an option for states to apply for and receive approval to develop and implement their own environmental regulatory programs. State programs must meet the minimum standards set forth in the federal statute but can impose more stringent regulations if desired. A state that assumes the role of primary regulator “is said to have achieved ‘primacy.’”<sup>12</sup>

The first iterations of these statutes did not address their application in Indian Country, nor did they contain an option for tribes to

assume the role of primary regulator as they did for states. This omission prompted litigants to initially challenge the authority of the EPA to enforce environmental statutes in Indian Country. For example, the Safe Drinking Water Act (SDWA), which “establishes a regulatory mechanism to insure the quality of publicly supplied drinking water [and] ... a regulatory program designed to prevent the endangerment of underground drinking water sources[,] ... did not expressly address the questions of Indian lands or Indian sovereignty” when it was first enacted.<sup>13</sup> In *Phillips Petroleum Company v. United States Environmental Protection Agency*, Phillips Petroleum argued that this

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During the 1980s, Congress amended most of the federal environmental statutes to make clear that they applied in Indian Country.<sup>22</sup>

omission “preclude[d] any interpretation of the statute which would allow it to apply to Indian lands[.]”<sup>14</sup> At issue was the EPA’s promulgation of an underground injection control (UIC) program regarding the Osage Nation mineral estate.<sup>15</sup>

The 10th Circuit Court of Appeals rejected this argument. It reasoned that the SDWA applied to “persons,” which the statute defined to include Indian tribes, and that there is a “presumption that Congress intends a general statute applying to all persons to include Indians and their property interests.”<sup>16</sup> It also concluded that the purpose of the SDWA was to enact minimum national standards for the protection of drinking water, and the exclusion of Indian lands from the reach of the statute would undermine this congressional policy.<sup>17</sup> It also afforded deference to the EPA’s interpretation of the statute as applying to Indian lands.<sup>18</sup>

States also argued that to the extent the federal environmental statutes applied in Indian Country, states should be the primary regulator there. The EPA, however, interpreted the statutes to not authorize state regulation in Indian Country. Several federal appellate court rulings upheld the EPA’s interpretation. For example, in

*State of Washington Dep’t of Ecology v. EPA*, the EPA had “refused to permit the State of Washington to apply its state hazardous waste regulations ... on ‘Indian lands’” under the Resource Conservation and Recovery Act (RCRA).<sup>19</sup> Although the state and legislative history were “totally silent on the issue of state regulatory jurisdiction on the reservations,”<sup>20</sup> the court concluded that the EPA had reasonably interpreted the RCRA not to authorize state jurisdiction based on “well-settled principles of federal Indian law” that “States are generally precluded from exercising jurisdiction over Indians in Indian Country unless Congress has clearly expressed an intention to permit it.”<sup>21</sup>

#### **APPLICATION OF ENVIRONMENTAL LAWS TO INDIAN COUNTRY AND TREATMENT OF TRIBES AS STATES**

During the 1980s, Congress amended most of the federal environmental statutes to make clear that they applied in Indian Country.<sup>22</sup> The amendments also included what are known as “treatment as a state” provisions (TAS) that authorized Indian tribes to be treated as states and gain primacy

to administer tribal environmental programs.<sup>23</sup> The statutes define the geographic area in which tribes may administer the environmental programs – typically within the tribe’s reservation or other areas within the tribe’s jurisdiction.<sup>24</sup>

When the environmental laws were first amended to treat tribes as states, there were questions about the scope and extent of that authority. At a minimum, tribes could administer the environmental laws to the extent of their *inherent* authority as a sovereign government. Tribes can even administer provisions of federal environmental laws when the law does not expressly authorize tribal regulation. For example, in *City of Albuquerque v. Browner*, the 10th Circuit held that a tribe had the inherent authority to issue water quality standards more stringent than those provided in the Clean Water Act despite the fact that the TAS provision of the CWA did not expressly include the section of the CWA dealing with promulgation of water quality standards.<sup>25</sup> The court found that this did not “prevent Indian tribes from exercising their inherent sovereign power to impose standards or limits that are more stringent than those imposed by the federal government.”<sup>26</sup>

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On reservations where there are significant amounts of land owned by non-Indians, however, a tribe's inherent authority is greatly limited. Due to rulings by the U.S. Supreme Court, tribes have been largely divested of their inherent authority to regulate land owned by non-Indians and can only regulate non-Indian land if they meet one of two relatively narrow exceptions. Because within many Indian reservations today there is a checkerboard pattern of Indian and non-Indian ownership of individual tracts of land, a tribe's ability to implement a uniform environmental policy within the reservation is frustrated by these limits on its inherent authority. In this circumstance, Congress can *delegate* to tribes powers above and beyond those that tribes possess inherently, including the authority to regulate *all* land within a reservation – even land owned by non-Indians.<sup>27</sup>

### **INHERENT VS. DELEGATED AUTHORITY AND NON-INDIAN FEE LAND**

In the late 1800s and early 1900s, Congress enforced a policy of allotment whereby it “sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribe members.”<sup>28</sup> As a result of this policy, “individual Tribe members were eventually free to sell their land,”<sup>29</sup> and many “individual parcels have passed hands to non-Indians.”<sup>30</sup> These non-Indian-owned lands are often referred to as “non-Indian fee lands” or just “fee lands.” It is not uncommon, then, for there to be many tracts of non-Indian fee land within the exterior boundaries of an Indian reservation. In many cases, the vast majority of land

within a reservation is owned in fee by non-Indians. The reservations of the Five Tribes affirmed by *McGirt* and its progeny are good examples of this phenomenon.

After Congress amended the various federal environmental statutes to allow tribal primacy,<sup>31</sup> the EPA promulgated regulations interpreting the statutes and defining the extent of the tribes' geographic jurisdiction. One of the most vexing questions the EPA encountered was whether a statute's authorization of tribal regulation within a “reservation” included all land within the reservation, including non-Indian fee land.

Initially, the EPA took a cautious approach and generally required tribes to demonstrate inherent authority to regulate non-Indian fee lands before allowing tribes to administer federal environmental programs on all lands within a reservation. This required the tribe to satisfy what is known as the *Montana* test. In 1981, the U.S. Supreme Court held that an Indian tribe presumptively lacks the inherent power to regulate conduct on non-Indian fee lands located within a reservation unless it satisfies one of two exceptions.<sup>32</sup> First, tribes can regulate the conduct of non-Indians “who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.”<sup>33</sup> This is known as the “consensual relations” exception. Second, a tribe may regulate the conduct of non-Indians on fee lands “when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.”<sup>34</sup> This is often referred to as the “direct effects” exception.

Although the EPA required tribes to satisfy a *Montana* exception

before granting them authority to regulate non-Indian fee lands, the EPA generally concluded that the regulation of things like air and water pollutants satisfied the second *Montana* exception since pollution threatened the health and welfare of the tribe.<sup>35</sup> However, requiring tribes to demonstrate jurisdiction by satisfying the *Montana* test on a case-by-case basis was a time-consuming and resource-intensive process that delayed approval of tribal regulation.<sup>36</sup>

Later, the EPA concluded that statutes like the Clean Air Act and Clean Water Act expressly delegated authority to the tribes to regulate all land within their reservations, including non-Indian fee land, obviating the need for the tribe to satisfy a *Montana* exception on a case-by-case basis. These interpretations were upheld by the federal courts. For example, in *Arizona Public Service Company v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Clean Air Act constitutes an express delegation of regulatory authority over non-Indian fee lands within a reservation.<sup>37</sup> The Clean Air Act authorizes tribal regulation “within the exterior boundaries of a reservation or other areas within the tribe's jurisdiction.”<sup>38</sup> The EPA interpreted “[t]he statute's clear distinction between areas ‘within the exterior boundaries of the reservation’ and ‘other areas within the tribe's jurisdiction’ [as] carry[ing] with it the implication that Congress considered the areas within the exterior boundaries of a tribe's reservation to be per se within the tribe's jurisdiction.”<sup>39</sup> The court, therefore, found that the Clean Air Act authorizes tribal regulation of all land within a reservation, including non-Indian fee land.<sup>40</sup>

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## CONCLUSION

Discussions of environmental regulatory jurisdiction too often ignore the inherent sovereignty of Indian tribes and the role of tribes in administering federal environmental laws. When analyzing the allocation of jurisdiction to regulate the environment and natural resources in Indian Country, elected officials, agency personnel and attorneys would be wise to foreground rather than footnote questions of tribal authority.

*Author's Note: The views expressed in this article 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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and Indigenous law from the TU College of Law and a J.D. from the OU College of Law.

## ENDNOTES

1. See, e.g., *Hodel v. Va. Surface Min. & Reclamation Ass'n*, 452 U.S. 264, 289 (1981) (discussing the Surface Mining Control and Reclamation Act).

2. This article focuses on tribal authority to regulate the environment and natural resources within their territories pursuant to a variety of federal environmental statutes. This is not to suggest, however, that this is the extent of tribal environmental authority. Since time immemorial, Indigenous peoples have been interested in the health and sustainability of their lands and natural environments. See Frank Pommersheim, "The Reservation as Place: A South Dakota Essay," 34 *S.D. L. Rev.* 246, 246-47 (1989). Their traditional ecological knowledge (TEK) – representing "the generation, accumulation, and transmission of knowledge and the adaptive management of local ecological resources" – contribute[s] to the conservation of biodiversity, rare species, protected areas, ecological processes, and to sustainable resource use in general." Fikret Berkes *et. al.*, "Rediscovery of Traditional Ecological Knowledge as Adaptive Management," 10 *Ecological*

Applications 1251, 1251 (2000). Only recently have federal agencies recognized the value of TEK and begun to incorporate it into their programs and decision-making. See, e.g., Office of Science and Technology Policy and CEQ, Guidance for Federal Departments and Agencies on Indigenous Knowledge, Nov. 30, 2022, available at <https://bit.ly/3J8l7v6> (last accessed Dec. 3, 2023).

3. Robert V. Percival, "Regulatory Evolution and the Future of Environmental Policy," 1997 *U. Chi. Legal F.* 159, 159 (1997).

4. *Id.* at 161.

5. *Id.* at 163-64.

6. Rob Dunn, "In Retrospect: Silent Spring," 485 *Nature* 578, 578 (2012).

7. Percival, *supra* note 3, at 164.

8. Pub. L. No. 91-190, 83 Stat. 852, codified at 42 U.S.C. §4321 *et seq.*

9. Pub. L. No. 93-205, 87 Stat. 884, codified at 16 U.S.C. §1531 *et seq.*

10. Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676, codified at 42 U.S.C. §7401 *et seq.*; Clean Water Act, Pub. L. No. 92-500, 86 Stat. 816, codified at 33 U.S.C. §1251 *et seq.*

11. Pub. L. No. 94-580, 90 Stat. 2795, codified at 42 U.S.C. §6901 *et seq.*

12. *Farrell-Cooper Min. Co. v. U.S. Dep't of the Interior*, 728 F.3d 1229, 1232 (10th Cir. 2013).

13. *Phillips Petroleum Co. v. U.S. E.P.A.*, 803 F.2d 545, 547 and 553 (10th Cir. 1986).

14. *Id.* at 553.

15. *Id.* at 549. The entire mineral estate underlying Osage County is held in trust by the United States for the benefit of the Osage Nation. See Act of June 28, 1906, §3, 34 Stat. 539, 543.

16. *Id.* at 556 (citing *Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 116-18 (1960)).

17. *Id.* at 554-56.

18. *Id.* at 557.

19. *Washington, Dep't of Ecology v. U.S. EPA*, 752 F.2d 1465, 1466 (9th Cir. 1985).

20. *Id.* at 1469.

21. *Id.* at 1469-70 (footnote and citations omitted).

22. See, e.g., Safe Drinking Water Amendments of 1986, Pub. L. No. 99-339, §302, 100 Stat. 642, 666 (1986).

23. See *id.* at §302, 100 Stat. at 665-66.

24. For example, the Clean Air Act authorizes treatment of Indian tribes as states "within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." 42 U.S.C. §7601(d). The Clean Water Act authorizes TAS with respect to water resources "which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation." 33 U.S.C. §1377(e).

25. 97 F.3d 415 (10th Cir. 1996).

26. *Id.* at 423.

27. See *U.S. v. Mazurie*, 419 U.S. 544, 554 (1975); see also *Montana v. U.S.*, 450 U.S. 544, 564 (1981) (inherent sovereignty over nonmembers "cannot survive without express congressional delegation").

28. *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S. Ct. 2452, 2463 (2020) (citation omitted).

29. *Id.* at 2463.

30. *Id.* at 2464.

31. In Oklahoma, the ability of tribes to obtain primacy to administer environmental laws overseen by the Environmental Protection Agency (such as the Clean Air Act or Clean Water Act) has been

limited by statute. In 2005, Congress attached a rider to the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA) that allows the state to achieve primacy over Indian Country lands and requires state consent to the treatment of a tribe as a state. See Pub. L. No. 109-59, §10211, 119 Stat. 1144 (2005). The state of Oklahoma generally may not administer environmental laws under the jurisdiction of an agency other than the EPA in Indian Country within the state. See *Oklahoma v. U.S. Dep't of the Interior*, 640 F. Supp. 3d 1130 (W.D. Okla. 2022) (Surface Mining Control and Reclamation Act).

32. See *Montana v. U.S.*, 450 U.S. 544 (1981).

33. *Id.* at 565 (citations omitted).

34. *Id.* at 566 (citations omitted).

35. See *Montana v. EPA*, 137 F.3d 1135 (9th Cir. 1998). The EPA initially interpreted the Clean Water Act as allowing tribal regulation of water resources on nonmember fee land only where the tribe could demonstrate inherent authority under one of the *Montana* exceptions, *id.* at 1138-39, but found that tribal regulation was justified under the direct effects exception. *Id.* at 1141. The 9th Circuit upheld the EPA's decision. *Id.*

36. See 81 Fed. Reg. 30183, 30189 (May 16, 2016) (noting that requiring tribes to satisfy the *Montana* test "constituted the single greatest administrative burden" in the approval process).

37. *Arizona Pub. Serv. Co. v. U.S. EPA*, 211 F.3d 1280, 1288 (D.C. Cir. 2000).

38. 42 U.S.C. §7601(d)(2)(B).

39. *Arizona Pub. Serv. Co.*, 211 F.3d at 1288.

40. *Id.* The EPA later revisited its interpretation of the Clean Water Act and concluded it contained an express delegation of authority to tribes to regulate nonmember fee land within their reservations. 81 Fed. Reg. 30183 (May 16, 2016).

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# Prevailing Wage and Apprenticeship Requirements of the Inflation Reduction Act: Compliance and Implementation

By Crystal F. Lineberry

**T**HE RENEWABLE ENERGY SECTOR IN OKLAHOMA and the entire United States is noticeably in a season of remarkable growth. State and federal governments continue to pass generous amounts in tax incentive legislation to advance these opportunities, bringing forth large-scale investments in clean power generation. Most taxpayers seeking to obtain these substantial tax credits must adhere to strict labor standards.

Such incentives will generate various apprenticeship opportunities and well-paying jobs while fueling a renewable energy boom in the U.S.

## THE INFLATION REDUCTION ACT

The Inflation Reduction Act of 2022 (IRA) enacted and amended a variety of federal clean energy tax incentives.<sup>1</sup> For most IRA tax credits, a five times multiplier bonus is added to the base amount of the tax credit and is available for certain projects<sup>2</sup> that satisfy certain prevailing wage and apprenticeship (PWA) requirements set forth in (26 CFR part 1) Section 45(b)(6), (7) and (8) of the Internal Revenue Code. Taxpayers

seeking to obtain this enhanced credit must ensure that contractors and all tiers of subcontractors comply and maintain sufficient records to receive the enhanced credit, with certain limited exceptions. In many instances, a failure to comply can result in a loss of millions of dollars in tax credits unless certain penalty and cure provisions are timely satisfied. For example, a PWA-compliant taxpayer's investment tax credit (ITC) will qualify for a 30% enhanced credit (6% base ITC plus the five times PWA multiplier<sup>3</sup>), whereas a taxpayer's ITC will be reduced to only the 6% base credit if the PWA requirements are not satisfied.

## IRS AND TREASURY'S GUIDANCE

On Nov. 30, 2022, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) published Notice 2022-61,<sup>4</sup> providing guidance and establishing a 60-day period for determining the applicability of the beginning of construction exception. Notice 2022-61 provides that taxpayers seeking to obtain the PWA enhanced credit must have begun construction or installation of a facility before Jan. 29, 2023, to be considered grandfathered for purposes of complying with the PWA requirements. Further, on Aug. 30, 2023, the U.S. Department of the Treasury and the IRS published proposed regulations<sup>5</sup>

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expanding on the prior guidance. Until the date the final regulations are published and “beginning after the date that is 60 days after August 29, 2023,” taxpayers must follow the proposed regulations with respect to the construction or installation of a facility or project in their entirety and in a consistent manner.<sup>6</sup> This means the PWA requirements within the proposed regulations are currently in effect and must be followed for taxpayers seeking the enhanced credit for renewable energy projects that began construction after Jan. 29, 2023.

#### **PREVAILING WAGE REQUIREMENT UNDER SECTION 45(B)(7)(A)**

The prevailing wage requirements provide that for any qualified facility, the taxpayer shall ensure that any *laborers* or *mechanics* employed by the taxpayer or any contractor or subcontractor in the construction of such facility and, with respect to any taxable



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year, the alteration or repair of such facility:

(A)(ii) ... shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.<sup>7</sup>

Section 1.45-7 of the proposed regulations define the terms laborer and mechanic as meaning:

(d)(7) ... those individuals whose duties are *manual or physical in nature* (including those individuals who use tools or who are performing the work of a trade). The terms laborer and mechanic include apprentices and helpers. The terms do not apply to individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

The U.S. Department of Labor (DOL) approved website for obtaining general wage

determinations is [www.sam.gov](http://www.sam.gov). A taxpayer must ensure all laborers and mechanics performing “construction, alteration, or repair” of a renewable energy project are paid at rates not less than the most recently DOL-published rates for the specific geographic area, type of construction and precise labor classification. The applicable rates will generally apply throughout the duration of the construction of the project.

Owners and developers of renewable energy projects seeking to obtain these enhanced credits should take certain measures at the contract negotiation stage and on a continual basis to ensure the success of claiming the PWA bonus credit. In general, for prevailing wage compliance, the applicable wage determinations should be incorporated within the contract that is awarded to the contractor employing the laborers or mechanics. Further, taxpayers must maintain sufficient evidence demonstrating PWA compliance. The proposed regulations provide that contracts should include provisions requiring contractors to submit certified payroll records reflecting the hours worked in each classification, the location and type of facility, the hourly rates of wages paid to each laborer and mechanic (including any correction payments made) and the total wages paid to each worker. Limited exceptions are afforded in the regulations to allow for timely corrective payments to be made. Implementing procedures to maintain and preserve accurate records on a continual basis will enable taxpayers to evidence their compliance more efficiently with the PWA requirements during tax filing periods.

## APPRENTICESHIP REQUIREMENTS

The IRA apprenticeship requirements include three components: 1) labor hours, 2) apprenticeship ratio and 3) participation.

### *The Labor Hours Requirement*

Under the labor hours requirement, the taxpayer shall ensure that:

with respect to construction of any qualified facility, not less than *the applicable percentage of the total labor hours* of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to [Section 45(b)(8)(B)] be performed by *qualified apprentices*.<sup>8</sup>

The IRA defines “labor hours” as:

the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor and exclude[ing] any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).<sup>9</sup>

The IRA defines “qualified apprentices” as:

an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B).

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Section 3131(e)(3)(B) defines a registered apprenticeship program as an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*).<sup>10</sup>

The total labor hours that must be performed by qualified apprentices is dependent upon when construction of a qualified facility has commenced. For construction beginning before Jan. 1, 2023, the requirement was that 10% of the total labor hours must be performed by qualified apprentices. Construction beginning after Dec. 31, 2022, and before Jan. 1, 2024, will be subject to a 12.5%-hour requirement. For any qualified facility that commences construction after Dec. 31, 2023, the labor hours requirement will be increased to 15%.<sup>11</sup>

The proposed regulations provide that the apprentice must be participating in a registered

apprenticeship program as evidenced by a written apprenticeship agreement. Such agreement should set forth the terms and conditions of the employment, the apprentice pay rate and the training program of the apprentice. Qualified apprentices may be paid less than the prevailing wage rates in accordance with the registered apprenticeship program agreement; however, if an apprentice is working in a classification that is not prescribed in the registered apprenticeship program, then to satisfy the PWA requirements, the full prevailing wage for such laborers or mechanics must be paid.<sup>12</sup>

#### *The Ratio Requirement*

Under Section 45(b)(8)(B), the labor hours requirement is subject to an *apprentice-to-journeyworker ratio* requirement prescribed by the DOL or the applicable approved state apprenticeship agency. The DOL or state-approved apprenticeship programs are

required to assign a numeric ratio of apprentices to journeyworkers in their occupational standards for apprenticeship training. This ratio is primarily intended to ensure there are adequate journeyworkers present on the jobsite to supervise the work of apprentices.

The proposed regulations require the ratio requirement to be met on a *daily* basis. This means the number of apprentices on any given day is not allowed to exceed the ratio standards. Any hours in excess of the ratio requirement are excluded from the total labor hours calculation for purposes of meeting the qualified apprentice's applicable percentage. Implementing standards to meet the daily ratio requirement is crucial for a contractor or subcontractor who is seeking to comply with the PWA requirements.

#### *The Participation Requirement*

The participation requirement requires that each taxpayer, contractor or subcontractor who employs four or more individuals to perform construction, alteration or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work. This requirement is not a daily requirement and will be met as long as the taxpayer, contractor or subcontractor employs at least one apprentice to perform work on a facility when four or more employees have been hired.<sup>13</sup>

Taxpayers, contractors and subcontractors should carefully review their scope of work and labor requirements for each job to proactively plan for the hiring of qualified apprentices. These apprenticeship requirements are more involved than the prevailing

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wage requirements. When applicable and required, taxpayers, owners, contractors and all tiers of subcontractors may be required to contact *at least* one DOL or state-approved apprenticeship program that has a presence in the geographic area of operation or that can be reasonably expected to transfer apprentices to the location of the facility and train apprentices in the specific occupation needed and has a “usual and customary business practice” of entering into apprenticeship agreements with employers.<sup>14</sup> The proposed regulations specifically require apprenticeship requests to be in writing and include information concerning the dates of employment, occupation or classification requested, location and type of work to be performed, number of apprentices needed, number of hours the apprentices will work, name and contact information of the person submitting the request and a statement that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and

in accordance with the registered apprenticeship program requirements. There are limited exceptions where a taxpayer will be treated to satisfy the apprenticeship requirements if the taxpayer satisfies the “Good Faith Effort Exception” or if the taxpayer makes certain penalty payments to the secretary of labor for the failure of satisfying the total qualified apprentice labor hours or participation requirements.<sup>15</sup>

Similar to the prevailing wage requirements, taxpayers must maintain sufficient records to demonstrate compliance with the apprenticeship requirements. Taxpayers, owners, contractors and all subcontractors should implement processes to obtain and maintain records, including, without limitation, the registered apprenticeship program agreements for each qualified apprentice, the hours worked and the rates paid to each apprentice, written requests made to registered apprenticeship programs, correspondence with registered apprenticeship programs, correction or penalty payments made, if

any, and any other documentation that may substantiate or extend a good faith effort extension.

#### **ADDITIONAL CLARITY FORTHCOMING**

The final rule is expected to be published during 2024, and industry leaders are optimistic the final regulations will provide additional clarity relating to satisfying the PWA requirements. On Nov. 21, 2023, the IRS held a public hearing where 25 industry witnesses suggested improvements to provide further clarity for taxpayers seeking to satisfy these requirements. Namely, the concerns expressed centered on recordkeeping burdens and potential abuse with the good faith effort exceptions.

#### **CONCLUSION**

The primary goal of the PWA enhanced tax incentive is to increase clean energy production and ensure construction workers on renewable energy projects receive fair wages while stimulating local economies. Critics argue the PWA requirements will raise

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The primary goal of the PWA enhanced tax incentive is to increase clean energy production and ensure construction workers on renewable energy projects receive fair wages while stimulating local economies.

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project costs by mandating payments of higher wages, onerous apprentice training programs and burdensome recordkeeping requirements; however, the benefits to the environment, the working class and the construction industry clearly outweigh the administrative burdens and higher project costs.



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## ABOUT THE AUTHOR



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## ENDNOTES

1. The Inflation Reduction Act of 2022, Public Law 117-169, 136 Stat. 1818 (Aug. 16, 2022), amended Sections 30C, 45, 45L, 45Q, 48, 48C and 179D.
2. Internal Revenue Service (IRS) Publication 5855 (8-2023) (irs.gov), "Prevailing wage and apprenticeship requirements do not apply to certain projects, including those that began construction (or installation under § 179D) prior to January 29, 2023, or certain projects of less than 1 megawatt when claiming §§ 45, 45Y, 48, and 48E."
3. Section 48(a)(9)(B).
4. Internal Revenue Service (IRS), Treasury, Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions, Notice 2022-61 (Nov. 30, 2022).
5. Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, 88 Fed. Reg. 60,018 (Aug. 30, 2023) (Proposed Rules) (to be codified at 26 CFR Part 1).
6. *Id.*
7. 26 C.F.R. §1.45(b)(7)(A)(ii).
8. 26 C.F.R. §1.45 (b)(8)(A)(i).
9. 26 C.F.R. §1.45 (b)(8)(E)(i).
10. 26 C.F.R. §1.45 (b)(8)(E)(ii).
11. 26 C.F.R. §1.45 (b)(8)(A)(i).
12. 88 Fed. Reg. 60,018 (Aug. 30, 2023) (Proposed Rules) (to be codified at 26 CFR Part 1).
13. 26 C.F.R. §1.455(b)(8)(C).
14. 88 Fed. Reg. 60,018 (Aug. 30, 2023) (Proposed Rules) (to be codified at 26 CFR Part 1).
15. 26 C.F.R. §1.45(b)(8)(D)(ii).

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# Overcoming Oklahoma's Orphaned and Abandoned Well Problem

By Niles Stuck

**OIL AND GAS-PRODUCING STATES**, including Oklahoma, are dotted with abandoned wells that risk the health and safety of those who live and work near them. Oklahoma Statutes create a regulatory framework intended to balance the interests of oil and gas operators who manage marginal wells with the public's interest in ensuring those wells do not pollute the environment and are ultimately plugged. The Oklahoma Corporation Commission (the Commission) is tasked with enforcing these 30-year-old laws, but as we will see in the case study below, their ability to prevent the abandonment of wells is limited by statute. While Oklahoma law has struggled to discourage operators from abandoning wells, new and inventive efforts to plug these abandoned wells have been promoted both in legislation and at the Commission.<sup>1</sup>

There are 16,978 wells listed on the "Orphan Well List" available from the Oklahoma Corporation Commission.<sup>2</sup> These are wells that have been managed by operators, but those operators have either ceased to exist or the Commission has ordered their surety forfeited. Oklahoma law provides:

The Corporation Commission is hereby authorized to promulgate rules for the plugging of all abandoned oil and gas wells. Abandoned wells shall be plugged under the direction and supervision of Commission employees as may be prescribed

by the Commission. Provided, however, the Commission shall not order any oil or gas well to be plugged or closed if the well is located on an otherwise producing oil or gas lease as defined by the Commission, unless such well poses an imminent threat to the public health and safety which shall be determined by the Commission after conducting a public hearing on the matter.<sup>3</sup>

Statute further requires all operators to post a \$25,000 Category B surety that is intended to ensure funds are available to satisfy plugging costs.<sup>4</sup> The Commission is

authorized to augment the surety solely upon demonstrating good cause concerning pollution or improper plugging, following an application initiated by the director of the Oil and Gas Conservation Division and subsequent to notice and hearing.<sup>5</sup> Category B sureties are capped at \$100,000.<sup>6</sup> In the event a well poses the risk of pollution and the responsible operator cannot be found or is financially unable to pay for plugging, the Commission may plug that well using its plugging fund.<sup>7</sup>

As a practical matter, the plugging liability of most operators is greater than \$25,000. The

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Commission's threat to force an operator to remediate pollution and plug a well or have their surety revoked is hollow if the operator can avoid the plugging by agreeing to forfeit a surety that is less than the plugging liability. It makes economic sense to forfeit a surety if the cost of compliance is more expensive. The operator will lose the ability to operate wells in Oklahoma, but that is only an incentive so long as the value of the wells they own is greater than their plugging liability. Once the operator has been found to be out of compliance with Commission regulations, the Commission can raise the operator's surety; however, in many instances, the operator has already chosen to abandon their wells. Once an operator puts themselves in this position, there is no reason for them to pay any additional surety. While raising a surety decreases the likelihood an operator may plug their wells, the Commission has few other options to encourage responsible operation. If the Commission does not raise the surety, an operator would repeatedly abandon specific wells

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with a plugging liability greater than \$25,000. An increased surety prevents a bad actor from continuing to operate oil and gas wells but also incentivizes those bad actors to abandon wells.

## ILLUSTRATION

The best way to illustrate this regulatory scheme regarding orphaned wells in Oklahoma is to review an actual case. For illustration purposes, we will review SF 2023-000001, the first application filed in 2023 in which the Commission sought to use public funds to plug a well filed on Jan. 4. The well at issue was the Smith No. 1 Well in Section 19, Township 7 North, Range 4 West, McClain County, Oklahoma. There was nothing unusual or special about this well or the application to plug it. It was chosen because it was the first well the Commission sought to plug last year.

Jones & Pellow Oil Co. drilled the Smith well in 1965. It was bought and sold a few times until it was ultimately purchased by Southcreek Petroleum Co., officing in Blanchard in 1995. There is nothing in the Commission's records to suggest the Smith well was a problem between 1965 and 2023, but Southcreek operated another well, the Peters #1-28 Well in Section 28, Township 4 North, Range 1 West, Garvin County, Oklahoma.

The Peters well was drilled in 1969, but production ceased in 2009. On Nov. 12, 2020, Robyn Strickland, director of the Oil and Gas Conservation Division, filed a complaint for contempt of rules and regulations, claiming that Southcreek had failed to remove materials that might constitute a fire hazard, failed to post proper lease signs and failed to plug the well

properly. The Commission sought to raise or revoke Southcreek's surety and assess fines.

On Dec. 30, 2020, a hearing was held before an administrative law judge where a Commission field inspector testified that Southcreek had stopped mowing around the well and had not posted proper signs. He testified that he complained to Southcreek in May 2019, but the operator had not taken any action. The field inspector also testified there was a hole in the production casing, and the well posed a risk of water pollution. Southcreek's managing partner testified they were experiencing financial difficulties and could not afford to maintain their wells.

Ultimately, the Commission ordered Southcreek's surety to be forfeited and used to plug the Peters well. It also required Southcreek to post a new \$100,000 surety before it could operate any wells in Oklahoma. While Southcreek forfeited its \$25,000 surety, the field inspector testified it would cost approximately \$28,000 to plug the Peters well. In addition to the Peters well, Southcreek operated 29 other wells, including the Smith well. Southcreek did pay a \$1,000 fine but did not pay the increased surety, and those 29 wells became abandoned or "orphaned." The Peters well was plugged in 2022.

By 2023, the Smith well had become a problem. On Jan. 4, Director Strickland filed an application requesting an emergency order to plug it. On Jan. 13, a field inspector testified the well was surrounded by pollution and threatened the surrounding cattle and water. The well site was so polluted the inspector could not gain access to the wellhead to

determine pressure. The inspector estimated the cost of plugging the well would be \$48,200. The Smith well was plugged using state funds pursuant to an emergency order on July 18, 2023, but by then, the cost of plugging had ballooned to \$70,852. The original order increasing Southcreek's surety references 28 other wells in addition to the Peters and the Smith wells, six of which remain on the orphaned well list waiting to be plugged at taxpayers' expense.

## EFFORTS TO ADDRESS ORPHANED OIL AND GAS WELLS

As we have seen, the Commission may increase surety to discourage operators from operating wells that risk pollution, but the Commission is limited by statute to only address this issue after operators fall out of compliance. Absent a hearing and order determining that an operator has caused pollution or refused to properly plug wells, the Commission may not increase its surety beyond \$25,000.<sup>8</sup> Notably, the Commission cannot consider an operator's plugging liability when requesting an increase in surety absent an order addressing pollution or plugging. In other words, an operator may acquire an unlimited number of marginal wells and the associated plugging liability, and the Commission is prohibited by statute from increasing their surety until they cause pollution or refuse to plug wells. By the time an event occurs that would result in increased surety, plugging liability may very well be greater than the maximum \$100,000 surety, and the operator is incentivized to abandon those wells rather than pay the increased surety, fines and cost

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of plugging. Statute does allow the Commission to consider total plugging liability but only upon an application brought by an operator to reduce their bond upon a determination that their plugging liability is less than \$25,000.

Efforts to address the surety scheme and use it to encourage responsible operation of oil and gas wells have stalled, but more success has been made in efforts to plug and remediate wells after they have been orphaned.

The \$25,000 Category B surety requirement scheme dates back to June 7, 1989. In 2022, Sen. Zack Taylor and Rep. Brad Boles introduced legislation to increase surety requirements to as much as \$150,000 for operators with more than 200 wells. That legislation died in the House Energy and Natural Resources Committee.

On Nov. 15, 2021, the Infrastructure Investment and Jobs

Act (IIJA) was passed, providing federal funds to plug abandoned and orphaned wells. As a result, the Commission received \$25 million to begin plugging in 2022. After an initial delay to ensure compliance with the program, the Commission began plugging abandoned wells in April 2023. In the 2023 fiscal year ending on June 30, the Commission contracted to plug 106 abandoned wells using federal funds. The first four of those wells were plugged at an average cost of \$20,125. At that average cost, the first payment of federal funds can plug 1,242 orphaned wells. An additional \$560 million is available from the IIJA, divided amongst various states. The U.S. Department of the Interior estimates Oklahoma's share of that money to be as high as \$281 million. Wells plugged pursuant to the IIJA include requirements, such as methane testing, that are not required by the state-funded

plugging program. In fiscal year 2023, the state program resulted in the plugging of 376 wells at an average cost of \$17,861.<sup>9</sup>

Oklahoma has most recently attempted to use carbon offset credits to incentivize the plugging of abandoned or orphaned wells. A carbon offset credit, in this context, can become available when a party that is not otherwise liable to plug a well does so and prevents a measurable amount of harmful gas, usually methane, from being released into the atmosphere. Such a credit becomes profitable when another party purchases it to offset its carbon footprint.

In 2023, Gov. Stitt signed SB 852 into law. Authored by Sen. Dave Rader and Rep. Brad Boles, this bill amended 52 O.S. §310 to allow the Commission to establish a framework by which carbon offset credits can be created by plugging abandoned wells. The

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law allows the Commission itself to obtain these credits and use funds generated from their sale to pay for additional funding. The Commission may also establish a method by which it can transfer these wells and the associated credits to a third party.<sup>10</sup> While these Commission rules are being negotiated, many companies and nonprofits have expressed interest in participating in this emerging marketplace.<sup>11</sup>

## CONCLUSION

The Oklahoma Corporation Commission is tasked with regulating the operation of wells in a manner that both discourages their abandonment and ensures abandoned wells are properly plugged. Oklahoma Statutes limit the Commission's authority to use surety requirements to

discourage abandonment, but recently, legislative action at both the state and federal levels has provided new and creative incentives intended to ensure that such wells are properly plugged and public safety preserved.

## ABOUT THE AUTHOR



Niles Stuck is a 2008 graduate of the OU College of Law who practices energy regulation law at A New Energy LLC and previously served as an administrative law judge at the Oklahoma Corporation Commission. Since leaving the Commission, he developed a practice at both the Commission and in district court. When not practicing law, Mr. Stuck enjoys time with his wife and two children in Edmond.

## ENDNOTES

1. I would like to thank my colleagues at A New Energy LLC, especially attorneys Jim Roth and Lindsey Pever and intern Chris Contreras. Their advice and edits have been invaluable.
2. <https://bit.ly/3PFiEwW>.
3. 17 O.S. §53.
4. 52 O.S. §318.1(A)(2).
5. 52 O.S. §318.1(C).
6. *Id.*
7. 52 O.S. §52.
8. 52 O.S. §318.1(C).
9. Mike W. Ray, "Federal well-plugging program now underway in Oklahoma," *Southwest Ledger News*, June 13, 2023. <https://bit.ly/3x9oUqn>.
10. 52 O.S. §310(B).
11. The Orphan Well Management Association, which my firm and I represent, has been created as a 501(c)(6) trade association to promote the interest of these participants.

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# ‘Washing Out’ an Overriding Royalty Interest: An Overview of *Oil Valley Petroleum v. Moore*

By Kraettli Q. Epperson

**I**N THE OCT. 3, 2023, OKLAHOMA SUPREME COURT CASE of *Oil Valley Petroleum v. Moore*, 2023 OK 90, the court considered the question of “whether a lessee’s release of a lease may extinguish another’s interests [e.g., an overriding royalty interest] in the base oil and gas lease when a claim is made of continuing production holding the lease.”<sup>1</sup>

The answer given by the Oklahoma Supreme Court was that “an overriding royalty interest may be extinguished by an extinguishment of the working interest from which it was carved by a lessee’s surrender of the lease in substantial compliance with the lease, unless the surrender is the result of fraud or breach of a fiduciary relationship.”<sup>2</sup>

By way of background, the trial court considered competing motions for summary judgment between the plaintiff (Oil Valley) holding a “top lease,” seeking to quiet title to their “top lease,” and the defendant (Clay Moore) holding an overriding royalty interest (ORRI) and seeking to preserve it. The trial court ruled in favor of Mr. Moore, preserving his ORRI in the face of a recorded release of the underlying oil and gas lease by relying on the continuation of

production in paying quantities. On appeal, the Oklahoma Court of Civil Appeals reversed the trial court ruling and ruled for the plaintiff, Oil Valley, extinguishing the ORRI. After granting certiorari, the Oklahoma Supreme Court ruled: “Opinion on the Court of Civil Appeals Vacated; Order of the District Court Reversed; and Cause Remanded for Additional Proceedings.” This matter was “remand[ed] [to the trial court] for additional proceedings consistent with this opinion.”<sup>3</sup>

This article focuses on the Supreme Court’s holding as to if and when an ORRI may be extinguished, aka “washed out.” What is considered herein is 1) how did the court get to this conclusion that an ORRI can be washed out and 2) which related questions remain unresolved.

## RELEVANT TERMINOLOGY

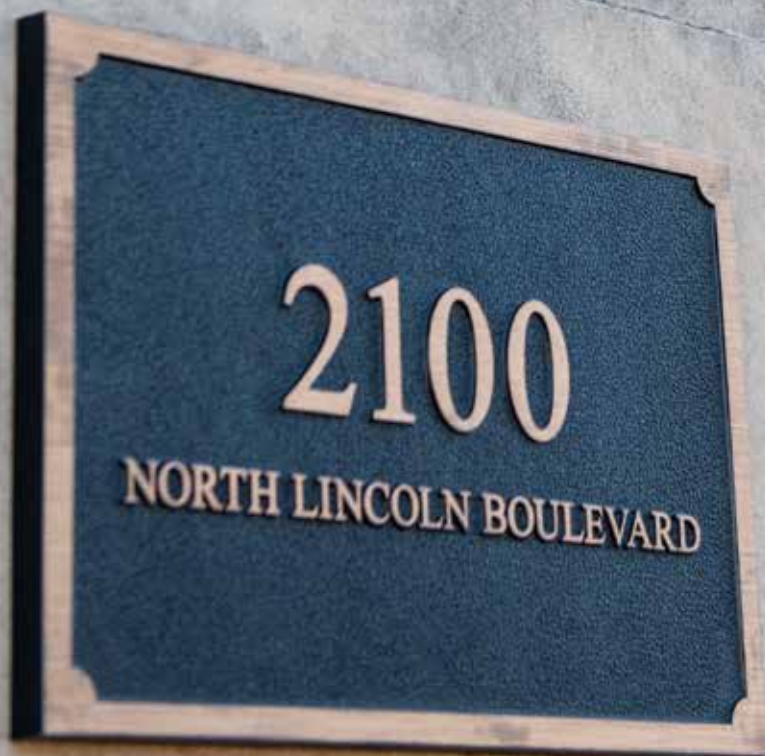
To address the first question, we need to briefly explore what the Supreme Court said about the meaning of the relevant albeit basic terms in this case, such as “oil and gas lease,” “working interest,” “overriding royalty interest,” “surrender” of an oil and gas lease, “base oil and gas lease,” “top lease,” “paying quantities” and related phrases.

**Oil and gas lease.** An oil and gas lease “does not operate as a conveyance of oil and gas in situ but constitutes merely a right to search for and reduce to possession such of these substances as might be found ... it is really a grant in praesenti of oil and gas to be captured in the lands described during the term demised and for so long thereafter as these substances may be produced.”<sup>4</sup>

**Working interest.** “Generally, the phrase ‘working interest’ ‘unequivocally implies the right to

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“work” or do the things necessary to producing, the lease and helps distinguish such an interest from one which does not carry with it that right.’ A working interest is one of those rights usually created as part of a cluster of rights granted to a lessee in an oil and gas lease.”<sup>5</sup>

**Overriding royalty interest.**

“An overriding royalty interest is often defined as: ‘a certain percentage of the working interest which as between the lessee and the assignee is not charged with the cost of development or production.’”<sup>6</sup>

**Primary term and habendum clause (secondary term).** The Supreme Court said:

The phrases “primary term” and “habendum clause” have

well-known meanings in our jurisprudence.<sup>7</sup>

One court has explained an incomplete but useful definition for a “primary term” as the period of time stated in the lease “during which the lease may be kept alive by a lessee by virtue of drilling operations or the payment of rentals, even though there is no production in paying quantities, ... [and] is also a period of time at the end of which the estate granted will terminate but which estate may be extended by some other provision, usually one for production.”<sup>8</sup>

In *Hall v. Galmor*, 2018 OK 59, 427 P.3d 1052, we noted the habendum clause in an oil and

gas lease defines the lease’s primary term *and usually extends the lease for a secondary term of indefinite duration* as long as oil, gas, or other minerals are being produced. After the primary term, a lease is effective based upon a well capable of production in paying quantities such that the lease remains viable under the habendum clause, which defines the duration of the lease in relation to the production life of the well. *Id.* 2018 OK 59, ¶21, 427 P.3d at 1063.<sup>9</sup>

**Surrender.** “We have explained a surrender or release of a lease in substantial compliance with the terms of the lease will be given effect. We have also explained a lessee’s interests in a

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lease may be extinguished with a surrender by delivery to a lessor or filing on the record in the proper county when allowed by the terms of the lease.”<sup>10</sup>

**Paying quantities.** “Paying quantities means not only discovery but taking out oil or gas in pursuance of the covenants and purposes of the lease in such quantities as will pay a profit to the lessee over the operating expenses.”<sup>11</sup>

**Base lease and bottom lease.** “The phrases ‘base lease’ or ‘bottom lease’ are often used to identify an earlier oil and gas lease which controls or defines oil and gas rights in subsequent conveyances involving the same leased premises.”<sup>12</sup>

**Top lease.** “A ‘top-lease’ is a lease subject to a pre-existing lease that has not expired.”<sup>13</sup>

### MEANING OF ‘WASHOUT’

As noted above, one of the basic questions considered by the court in the present case is: Can an existing ORRI be extinguished – or, in other words, “washed out” – and if so, under what circumstances?

In explaining the common use of this term, this court said:

The term “washout” may be used to refer to extinguishing a nonoperating interest, such as an overriding royalty, by another’s surrender or release of a lease. However, the term is often used when a party intentionally surrenders the lease and then reacquires the same lease free of the nonoperating interests which are “washed out” by the surrender. For example, one court has explained: “The intentional termination of a lease to destroy a nonoperating interest is a washout tactic. A washout is conduct by an operator designed to

extinguish the overriding royalty interest while at the same time preserving the operator’s interest.” One author has stated that in addition to overriding royalty interests, “washouts can happen to any type of non-operating interest in an oil and gas lease, such as a back-in option, net profits interest, security interest, or a non-operating working interest.”<sup>14</sup>

### PROTECTING AGAINST WASHOUT OR EXTINGUISHMENT

This court, in this opinion, has supported the policy of expecting the holder of the leasehold or ORRI interest to protect itself against a washout:

For several decades, including a time prior to Moore obtaining his assignment, model operating agreements for those possessing an operating interest have often included provisions for abandonment and surrender of a lease as well as renewal or extension of a lease to prevent

a washout. ... Similar language indicating the availability of contractual extinguishment protection is found in *Rees v. Briscoe*, 1957 OK 174, 315 P.2d 758. One party expected the opposing party to protect a reserved override when new leases were created, and the Court noted “it would have been easy to have added a few words to the effect that the reservation [of the override] should apply to renewals or extensions of the leases assigned.” *Id.* 315 P.2d at 761 (explanation added). Some courts have viewed a washout as not necessarily wrongful and prohibited by an oil and gas lease, but should be prohibited by express anti-washout provisions if desired by the parties.<sup>15</sup>

If the interest holder fails to protect itself by including such anti-washout language in its agreements, there are several other defenses to assert that would attempt to defeat the washout, as discussed below.



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## TYPICAL STEPS TO ACHIEVE A WASHOUT

Two typical methods used to achieve a washout include the lessee – who holds the lease (which supports the ORRI) – signing and, for constructive notice purposes, filing in the local county land records, an instrument that releases or surrenders the lease rights. This action restores the right of the lessor/mineral owner to either directly explore for and extract the oil and gas or indirectly do it through granting a new oil and gas lease. The second option involves the lessee establishing the absence of production in paying quantities (roughly meaning revenue fails to exceed expenses), thereby terminating the lease by its terms. In the present case, both methods were asserted.

As to the use of an affirmative release by the lessee, the Supreme Court stated:

The Athan lease [the lease from which the subject ORRI was carved] provides in part the following: “Lessee may at any time and from time to time surrender this lease as to any part or parts of the leased premises by delivering or mailing a release thereof to lessor, or by placing a release of record in the proper County.” We have explained a surrender or release of a lease in substantial compliance with the terms of the lease will be given effect. We have also explained a lessee’s interests in a lease may be extinguished with a surrender by delivery to a lessor or filing on the record in the proper county when allowed by the terms of the lease.<sup>16</sup>

It should be noted that this court held, “The parties did not specifically seek an adjudication whether ‘execution of the release’ satisfied the lease language for a surrender. We need not make this first-instance adjudication in an appeal.”<sup>17</sup>

The second justification to extinguish the lease (lack of paying quantities) and the dependent ORRI arises if the lessee fails to complete a well during the primary term of the lease (varying in time from one to five years) and, thereafter, to produce continuously in paying quantities. Such termination could occur by the lessee surrendering or releasing the lease in writing or by the lessor or a new lessee completing a quiet title action to prove a lack of paying quantities. After such termination, a different lessee could take a lease free from the prior ORRI. Sometimes, as occurred in this present case, another lessee, often waiting on the sidelines, takes a top lease, which would become effective only upon the termination of the base lease.

The determination as to whether production in paying quantities either never began or, after beginning, ceased (without being restored within a reasonable or stipulated period, such as under a 60-day cessation clause in the lease) is a fact-specific matter.

When the lease ends, so does the ORRI that was “carved” from it:

[A]n overriding royalty may be lost entirely by expiration of the primary lease since, absent fraud or breach of fiduciary relationship, the interest does not continue and attach to a subsequent lease secured, in good faith, by the lessee. ... Neither does an overriding royalty survive cancellation,

surrender, abandonment resulting from diminution of production beyond economic feasibility, nor total failure to secure production in paying quantities.<sup>18</sup>

## OTHER DEFENSES TO A WASHOUT

This court takes time to explain that the holder of an ORRI can assert other defenses when there is an attempt to extinguish an ORRI by a release, either with or without a top lease being in place. This court emphasizes that the defending party must first assert/plead and then prove, in court, the essential elements of the defenses. Such defenses could include equity, fraud (actual or constructive) and breach of fiduciary duty, and production in paying quantities.

### *Equity is Relevant*

In order to extinguish the underlying base lease and, thereby, washout the related ORRI and consequently quiet the title, the claimant must prove such action is supported by equitable principles: “Oil Valley did not address elements to a claim in equity to cancel an oil and gas lease based upon all of the circumstances in the controversy.”<sup>19</sup> And, “We agree that a trial court proceeding in equity must consider all circumstances when parties seek to cancel an oil and gas lease and adjudicate title.”<sup>20</sup> And, “Oil Valley argues Moore has no claim in equity. Oil Valley is mistaken. We have reaffirmed for several decades a party possessing an overriding royalty may challenge a surrender or release when alleging in an equitable proceeding the release or surrender was a result of fraud or a breach of a fiduciary duty.”<sup>21</sup>

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The gist of the ruling was that the best way for a holder of an ORRI to protect their interest against being washed out is to include an anti-wash provision in their agreement or assignment with the lessee.

*Breach of Fiduciary Duty  
or Fraud Are Defenses*

This court held, “An overriding royalty interest may be extinguished by an extinguishment of the working interest from which it was carved by lessee’s surrender in substantial compliance with the lease, unless the surrender is the result of fraud or breach of a fiduciary relationship.”<sup>22</sup> And, “We have reaffirmed for several decades a party possessing an overriding royalty may challenge a surrender or release when alleging in an equitable proceeding the release or surrender was a result of fraud or a breach of a fiduciary duty.”<sup>23</sup>

A simple release of an ORRI is not typically deemed to automatically constitute constructive fraud, logically meaning it would not be considered actual fraud either:

In summary, our opinions spanning several decades in *XAE, De Mik, Thornburgh*, and *Kile* explain an overriding royalty interest being lost or extinguished when the lessee’s working interest that was used to carve out the override was

itself lost or extinguished. These opinions indicate an overriding royalty extinguished by extinguishing its related working interest is not within the traditional class of constructive frauds when these frauds are defined by the nature and subject of the transaction itself.<sup>24</sup>

Further, the Supreme Court said, “We explained in *Krug v. Helmerich & Payne, Inc.*, 2013 OK 104, 320 P.3d 1012, that our prior opinions could not support a general proposition that Oklahoma law recognizes a fiduciary duty between lessors and lessees in an oil and gas lease. *Id.* 2013 OK 104, n. 7, 320 P.3d at 109.”<sup>25</sup>

In another case, it was stated that there is not a fiduciary duty based solely on the existence of a lease: “In *Bunger v. Rogers*, 1941 OK 117, ¶ 5, 188 Okla. 620, 112 P.2d 361, 363, the plaintiff sought damages for underpayment of royalty. This Court stated that the producer’s ‘liability was purely a contractual one and in no sense fiduciary.’”<sup>26</sup> And, “In *Goodall*, 1997 OK 74 at ¶ 11, 944 P.2d at 295, this Court refused to find an operator owed

a fiduciary duty to an overriding royalty interest owner based solely on the lease.”<sup>27</sup>

*Production in Paying Quantities  
Might Be a Defense*

The court said, “Amicus curiae on certiorari correctly identifies the issues presented to us by the parties: Whether a lessee’s release of a lease may extinguish another’s interests in the base oil and gas lease when a claim is made of continuing production holding the lease, and whether this production can be used to show a party’s ‘unclean hands’ or constructive fraud in obtaining the release.”<sup>28</sup> However, a lease is not continued under the habendum clause “by mere production, but a commercially profitable production which is often referred to as ‘production in paying quantities.’”<sup>29</sup>

“We have reaffirmed for several decades a party possessing an overriding royalty may challenge a surrender or release when alleging in an equitable proceeding the release or surrender was a result of fraud or a breach of a fiduciary duty.”<sup>30</sup>

The court failed to state whether, in this instance, the release that was given by the lessee at a time the well was allegedly producing in paying quantities constituted fraud or breach of a fiduciary duty. This was because the facts presented by the defendant were insufficient to establish whether there were paying quantities.<sup>31</sup>

## CONCLUSION

The court refused to affirm the decisions of the trial court or the Court of Civil Appeals but instead remanded it to the trial court for further proceedings following the guidance provided in this opinion.

The gist of the ruling was that the best way for a holder of an ORRI

to protect their interest against being washed out is to include an anti-wash provision in their agreement or assignment with the lessee. In the absence of such an express protection, the holder can offer as defenses claims of equity, fraud and breach of fiduciary duty, and production in paying quantities.

*Author's Note: Kraettli Q. Epperson was the author of an amicus brief in this case and supported the losing side on appeal, the defendant, Larry E. Moore; this matter has been "remand[ed] [to the trial court] for additional proceedings consistent with this opinion."* Oil Valley, para. 92.

## ABOUT THE AUTHOR



Kraettli Q. Epperson is of counsel with Nash Cohenour & Giessmann PC in Oklahoma City. He received his J.D. from the

OCU School of Law in 1978 and focuses on mineral and surface title litigation and expert representation. Mr. Epperson chaired the OBA Title Examination Standards Committee from 1988 to 2020 and taught "Oklahoma Land Titles" at the OCU School of Law from 1982 to 2018. He edits and co-authors West/Epperson: Oklahoma Real Estate Forms.

## ENDNOTES

1. Oil Valley, para. 2.
2. Oil Valley, para. 0.
3. Oil Valley, para. 92.
4. Oil Valley, para. 24; Fn 15: *Hinds v. Phillips Petroleum Co.*, 1979 OK 22, 591 P.3d 697, 698; see also *Mohoma Oil Co. v. Ambassador Oil Corp.*, 1970 OK 161, 474 P.2d 950, 960 ("An oil and gas lease is a chattel real, an incorporeal hereditament, and a profit a pendre, which grants only the exclusive right, subject to legislative control, to explore by drilling operations, to reduce to possession, and thus acquire title to the oil and gas which is personalty.").
5. Oil Valley, para. 24; Fn. 14: *Colonial Royalties Co. v. Keener*, 1953 OK 385, 266 P.2d 467, 472. An owner of a working interest may have limited that "right to work" by an operating agreement.

Howard R. Williams and Charles J. Meyers, *Manual of Oil and Gas Terms*, 472 (5th ed. 1981) (a "non-operating working interest" is "the working interest or fraction thereof in a tract the owner of which is without operating rights by reason of an operating agreement.").

6. Oil Valley, para. 22, Fn. 46: *XAE Corp. v. SMR Property Management Co.*, 1998 OK 51, ¶23, 968 P.2d 1201, 1206 (quoting *Thornburgh v. Cole*, 1949 OK 167, 201 Okla. 609, 207 P.2d 1096, 1098); see also *Claude C. Arnold Non-Operated Royalty Interest Props., L.L.C. v. Cabot Oil & Gas Corp.*, supra n. 32, at n. 2, 485 P.3d at 819 (citing *De Mik v. Cargill*, 1971 OK 61, 485 P.2d 229, 232); *Walden v. Potts*, 1944 OK 299, 194 Okla. 453, 152 P.2d 923 (syllabus by the court) (*paying quantities* means not only discovery but taking out oil or gas in pursuance of the covenants and purposes of the lease in such quantities as will pay a profit to the lessee over the operating expenses).

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# Here Comes the Sun: Oklahoma's Bright Solar Future

*By Lindsey Pever*



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**OUR SOLAR FUTURE IS BRIGHT IN OKLAHOMA!** Some of you may be wondering whether you should go solar, what is the law and what is the risk. I get these questions often. As a co-founder of the Oklahoma Solar Association, I am familiar with Oklahoma's solar potential, and I agree with what Thomas Edison said: "I'd put my money on the sun and solar energy. What a source of power! I hope we don't have to wait until oil and coal run out before we tackle that. I wish I had more years left."<sup>1</sup>

Let me share some facts, and let's start at the beginning. Oklahoma, widely known for its oil and natural gas industries, also has abundant natural energy resources such as wind and solar. But since it is not feasible for everyone to have an oil or gas well or even a wind turbine at home, solar energy can benefit any Oklahoman. According to data from the National Renewable Energy Laboratory, Oklahoma is tied for No. 6 in the nation for its solar potential.<sup>2</sup> Oklahoma is ranked No. 8 in peak sun hours, which is an hour in the day when the intensity of the sunlight (or solar irradiance) generates approximately 1,000 watts (or one kilowatt) of energy per square meter of surface area.<sup>3</sup> This means Oklahoma is a top 10 state in solar irradiance and solar potential, yet we find our state in the bottom 10 for solar deployment. Put simply, we can do better.

In our country, ideas we value are typically followed by capital to support further research and development, but sometimes politics get in the way of this pursuit. Take, for instance, the White House solar panels. Although President Nixon first inquired about the possibility, it was President Carter who, in 1979, installed the White House solar panels and established funding for the then-nascent Department of Energy (DOE). However, by 1986, President Reagan removed the panels and slashed renewables in the DOE budget in favor of continuing to fund oil and coal production.<sup>4</sup> The result of this political tug-of-war begs the question, how much more advanced and inexpensive could rooftop solar be today if the technology and policies had nearly four additional decades to develop? Even despite losing that extra

time, technological improvements and declining solar costs make it financially feasible to install solar today. This fact helps solar rise above politics. After all, good investments are favored by all political sides.

As consumers become better educated and more thoughtful about their energy choices, electric utilities across the country are shifting business models in efforts to adjust to the changing marketplace for consumers. Consequently, the laws and regulations around solar are changing. Now more than ever, people understand their electric consumption, the different technologies that supply their energy and the associated costs and fees, and they want more control over the sources of their energy and a hand in efforts to contain costs from rising utility rates.

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## SOLAR ENERGY 101

When discussing solar, a few definitions are important. Distributed generation (DG), often called “behind the meter” solar, is comprised of “technologies that generate electricity at or near where it will be used, such as solar panels and combined heat and power.”<sup>5</sup> For simplicity purposes, solar developments can be divided into three categories: utility-scale, community and rooftop. First, utility-scale solar consists of very large projects located “in front of the meter,” where power is generated and then fed directly onto the transmission grid and sold to wholesale buyers. Second is community solar, which is sometimes referred to as a solar garden or shared solar. These are smaller than utility-scale projects but still large in size. Community solar has the ability to power whole neighborhoods. These systems are located “behind the meter” and are connected to the grid through distribution lines similar to the ones you might find in your neighborhood. Third, rooftop solar installations can be commercial or residential, are also behind the meter and are located onsite – mounted onto the ground or the roof, as the name suggests.

For the purposes of this article, much of the discussion is focused on rooftop solar. Although Oklahoma boasts considerable solar potential, its current policy decisions and less-than-welcoming laws have hindered the state from capitalizing on its rooftop solar potential, resulting in a lower ranking among states maximizing solar capacity.<sup>6</sup> In fact, many states have far less solar irradiance than Oklahoma yet are still ranked much higher.<sup>7</sup> Among its many benefits, solar generates power

without greenhouse gas emissions, which are known to contribute to climate change.<sup>8</sup> For power generation, solar is an alternative to and decreases reliance on our fossil fuel resources, which are finite. Furthermore, solar provides power generation at the source, which limits the need to transport fuels such as coal and natural gas across long distances. But this is no anti-fossil fuel article. Oklahoma will undoubtedly maximize its energy resources, such as oil and natural gas, for its many non-power generation uses long into the future. But the state should also recognize the additional benefits solar can offer all Oklahomans, and the laws should reflect how to also maximize another of Oklahoma’s ample and renewable resources – sunlight.

There are many reasons to use more solar power, but there seems to be only one perennial, non-political argument against its increased use: Solar systems are costly. Encouragingly, cost concerns have decreased due to the dramatic decline in the price of solar equipment over the last decade.<sup>9</sup> Cost aside, before a system can be added to a home or business, one must consider the applicable state law and utility rate options.

The majority of Oklahomans live in monopolistic territories for their retail electricity. There are other types of utilities, however, each with varying abilities to alter rates across the state. Oklahoma’s electric utilities include publicly traded investor-owned utilities (IOUs), electric co-ops and municipally owned electric utilities. IOUs with monopoly territories are subject to the jurisdiction of the Oklahoma Corporation Commission to make changes

to rates and tariffs. Municipally owned electric systems garner their oversight from elected bodies of the municipality, typically the mayor and city council or a utility trust authority. Electric cooperatives are run by an elected Board of Directors composed of members within that utility’s territory. Utilities modify rates when they deem changes are necessary. Take net metering for example: Net metering is a billing mechanism that credits and/or compensates solar energy system owners for the electricity they produce and add to the grid against the energy they consume. Net metering rates vary widely by jurisdiction and can be adjusted in different ways depending on the utility. Net metering rates have changed often in the last decade as more people install solar and utilities grapple with how to shift financial losses and address additional power on the grid. According to the North Carolina Clean Energy Technology Center, an advocacy center for a sustainable energy economy, there has been an uptick in new and increased fees and charges, such as grid access fees or solar customer fees.<sup>10</sup> All of these variations in type of utility, oversight and sometimes unexpected changes in rates and fees are a barrier to increased solar in Oklahoma because it can be confusing and frustrating for someone looking to take control of their energy use by installing solar.

## SOLAR FINANCING

Rooftop solar companies and their customers rely on a variety of financing options as solar energy develops and endures as an industry. Financing mechanisms available to those installing

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solar depend on location, such as the state, municipality and utility where the system will be located. Regardless of location, customers installing solar can benefit from a 30% federal tax credit; however, there are no other state, municipal or utility-level credits or rebates currently available in Oklahoma law. In other states where credits, refunds or rebates exist at the state and local levels, there are unsurprisingly higher levels of solar installed, which demonstrates how a lack of these incentives in Oklahoma is another barrier to more solar development. To offer a general example, while an investment in a rooftop solar installation can typically pencil out in around five to 10 years, not everyone interested in this investment has the upfront capital.<sup>11</sup> Therefore, those looking to deploy solar on their roof must have financing options. People with equity in their homes or those with good credit could take advantage of a home equity loan or line of credit, but these options are not available to everyone.

Third-party financing is a commonly used tool for consumers who lack the upfront funds necessary for solar installation. But when a third party finances a solar system, which ultimately provides the customer with electricity, it must be determined under Oklahoma law whether that company is behaving as a utility to be regulated. Third-party financing comes in the form of power purchase agreements (PPAs) or solar leases. PPAs allow companies to install and own rooftop solar equipment, and the customer pays for the output generated by the system. Leases allow a company to install but own the rooftop solar equipment and lease that equipment and the power it produces to the customer on whose roof it is installed. Having more options in the market for financing provides more people of varying income levels an opportunity to finance solar. A shortage of companies providing these financing mechanisms means less competition and higher rates, which serves as an additional barrier to the development of more solar energy in Oklahoma.

One reason fewer companies that provide third-party financing options exist in Oklahoma is a lack of clarity in the law on this topic. Third-party financing companies do not want to be accused of being a “utility” in the eyes of the law. At one time, interpretation of the Retail Electric Supplier Certified Territory Act (RESCTA) varied on this question of whether customers were permitted to enter agreements such as PPAs and leases with an entity other than the utility. This is because RESCTA gives retail electric suppliers *exclusive* rights to “furnish retail electric service” to customers within a certified territory.<sup>12</sup> By definition, “retail electric supplier” is “any person, firm, corporation, association or cooperative corporation, exclusive of municipal corporations or beneficial trusts thereof, engaged in the furnishing of retail electric service.”<sup>13</sup> The debate was whether a company that offers to lease or sell rooftop solar systems to individuals as described above was “furnishing retail electric service” in violation of state statute. In 2018, the attorney general said ... it depends.<sup>14</sup> AG Opinion 2018-5 distinguished that in incorporated areas, PPAs and leases are both permitted, while in unincorporated areas, PPAs are prohibited, and only leases are permitted. In my experience, this helped to clarify some market confusion, but since the clarity came in the form of an attorney general’s opinion and not through statute, some companies that specialize in these financing mechanisms have been loath to invest in the state for fear of running afoul of RESCTA. A lack of clarity has resulted in fewer options for Oklahomans interested in using financing to install solar.

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## OBSTACLES TO INCREASED SOLAR IN OKLAHOMA

A number of uncertainties in law and policy serve as obstacles to more solar in the state. Across the country, consumers are learning that their utilities are changing tariffs and fees to mitigate the effects on their bottom lines caused by an increase in rooftop solar deployment.<sup>15</sup> Some of these rate and tariff changes come as a surprise to customers and negatively impact the established *pro forma* of an installed system. In Oklahoma, a 2014 legislative action seemingly aimed at maintaining parity between distributed generation (solar) customers and regular (non-solar) customers resulted in a bill allowing utilities to levy a usage fee on new solar customers who remained connected to the grid.<sup>16</sup>

In an attempt to address the presumption that solar customers did not pay their share of grid maintenance and infrastructure costs, the law purports to protect non-solar customers from subsidizing solar customers' grid expenses.<sup>17</sup> This parity argument assumed that as solar energy became more popular, eventually, the exclusive burden of paying for grid maintenance would fall to non-solar customers since those with solar might be able to provide enough of their own energy to eliminate their electric bills.<sup>18</sup> However, at the time of the bill's passage, one utility official indicated that only 200 to 400 of the 800,000 customers had installed solar or wind.<sup>19</sup> (The author notes the age of the law and articles referenced here, but there has been no meaningful legal change). Therefore, the argument purportedly in favor of protecting non-solar customers from (eventually) footing the bill of grid fees,

while valid, was hardly urgent.<sup>20</sup> The parity argument also failed to acknowledge the value of power that was placed back onto the grid through the solar customer's excess production.<sup>21</sup> Although the adoption of this law received much negative attention nationally, it has yet to have an impact on customers.<sup>22</sup> That is because for the law to be implemented, a utility must submit a tariff to the Oklahoma Corporation Commission (OCC) to analyze whether non-solar customers are somehow subsidizing solar customers. The one time a utility underwent this process, the OCC determined the data used was outdated and did not prove subsidization was occurring.<sup>23</sup> No utility has made a second attempt at establishing fees pursuant to this law. Having this law on the books has made a more confusing market for potential rooftop solar customers in Oklahoma.

## OPPORTUNITIES FOR INCREASED SOLAR IN OKLAHOMA

Utilities can look to themselves to be leaders in the ever-changing world of power generation. But where the utilities do not lead the way to find solutions, states are known to step in. In states where renewable energy is flourishing, the developments came, in part, from strong mandates on the power industry to incorporate renewables like solar.<sup>24</sup> Distributed generation, such as solar, decreases the need for fuel to travel long distances to power plants on the grid, which is expensive to maintain and can be more vulnerable to extreme weather and cyberattacks.<sup>25</sup> However, even if more Oklahomans took advantage of these benefits by installing solar systems, not all utilities are required

to purchase the excess generation produced by the systems from those customers. This is one risk factor in installing a solar system that is mostly out of the consumer's control. As mentioned, there are three types of electric utilities in the state, all with different requirements – some easier than others – to change tariffs and rates. Each utility also has different net metering rules and rates. Rate consistency is very important for a solar customer since systems are often built using some sort of financing product. If the rates change before the rooftop solar system is paid off, it changes the planned pay-back time for that system. Utilities have an opportunity to get creative to ensure they can deliver enough power to the grid at prices that are fair for all customers amid changing consumer demands.

The fact is, rates have been changing and will continue to change – sometimes for utility's economic concerns and sometimes due to outside forces. One such outside force is the influx of electric vehicles into the market. Electric vehicle sales are now 16% of U.S. light-duty auto sales.<sup>26</sup> Rapid growth in EV sales necessitates new considerations for the grid and utility business models. This is because EVs place new, additional load on the grid *and* provide new income streams for utilities. But EVs could also eventually shift peak demand times since most charge their vehicles at night. Currently, the demand for electricity is lower at night while most of us are asleep, but if suddenly a large number of us were charging our cars at night, EVs could lead to a shift in that peak. Electric car sales exceeded 10 million in 2022, which equated to 14% of all new cars sold according to the *Global Electric Vehicle Outlook Report*

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by the International Energy Agency (IEA).<sup>27</sup> *Three Million and Counting* was IEA's title of the same report just five years ago.<sup>28</sup> That number is sure to grow, as every major auto manufacturer is offering or will soon offer electric or hybrid models. Utilities have created EV divisions and are examining and forecasting how EVs will influence their delivery of power in the future. Moreover, EV technology continues improving – batteries hold a charge longer and recharge quicker than ever. Therefore, depending on consumer motivation – be it to save the environment, to save money on gas or simply to own the latest in automobile technology – more EVs in the market will equate to a higher demand for electricity, which will become an opportunity for the electric power sector. In the U.S., especially compared to other countries, our reliable power allows us to recharge EVs at home, adding one more benefit – convenience. It is becoming more commonplace for people to use the electricity harnessed during the day via rooftop solar panels to charge their electric vehicles.

## CONCLUSION

Oklahoma – which is widely known for its oil, natural gas and wind industries – should maximize all its natural resources, including solar. More Oklahomans could benefit from the clarification and modernization of the laws surrounding solar. Among the many reasons to increase the mix of clean power, which includes solar, are its reduced impact on the environment, the safety provided by power generation at or near the source and consumer demand. As consumers better understand their electric consumption, available

technologies and the associated costs and fees, and as they seek more control over both the sources of their energy and rising utility rates, they should not be held captive with their options restricted. Oklahoma should increase its mix of solar energy as it is a good long-term financial investment, it provides security benefits that other sources of power lack and, finally, consumer demand for solar and more sustainable electricity sources will eventually be too great to ignore.<sup>29</sup>

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# Navigating Mineral Interest Valuation Pathways for Medicaid Long-Term Care Applications

By Shannon D. Smith

**UNDERSTANDING THE VALUATION OF MINERAL INTERESTS** is crucial for Medicaid eligibility for long-term care services but is useful in other regards as well. This asset can be easily overlooked as clients might not be aware of the sometimes significant attributed value. This article provides a comprehensive overview, from the basic valuation formulas to the specific exclusions that can affect eligibility. It highlights the importance of accurate documentation and understanding the potential value of both producing and nonproducing mineral interests and aims to clarify the process for attorneys working in elder law, estate planning, oil and gas and other areas.

Applying for Medicaid benefits for long-term care is a complex and time-sensitive endeavor. Families often face special challenges in assisting loved ones during difficult times, especially when medical considerations contribute to stress and urgency. Whether records are well maintained or not, even organized files can require supplementation when applying for Medicaid. This is where a guide or “roadmap” can be very helpful. It not only explains and eases the frustrations applicants and their families might experience, but it also streamlines the application process, increasing the likelihood of initial approval. It can also help ensure that tasks associated with the mineral interest

valuation process are accomplished efficiently and effectively, making it more manageable for everyone involved. Even with such a roadmap, unexpected speed bumps can pop up along the way. The roadmap set forth herein will address both guideposts and speed bumps – an understanding of which can be helpful in getting clients from application to valuation while reducing friction and making the journey less stressful along the way.

For Medicaid eligibility, all mineral interests are considered to have value. Mineral interests owned separately from real property are attributed a resource value as part of the Medicaid eligibility determination process in Oklahoma – a fact

that sometimes surprises applicants, especially those who own only nonproducing or open (unleased) interests. On this path, it is helpful to assist applicants in developing an understanding of why all mineral interests – whether leased, royalty-producing or open (unleased) – have value and why appropriate documentation must be submitted for each interest owned.

Applicants may provide appraisal valuations from established professionals who are knowledgeable in the area or may request that Oklahoma Human Services provide a resource valuation based on the submittal of documentation of mineral interest ownership information. For





the purposes of providing such valuations, Oklahoma Human Services addresses three basic categories of mineral interests and applies a set formula for valuing each. Being aware of these valuation formulas and potential resource exclusions can make the valuation process much easier to navigate. Beginning with exclusions and proceeding through specifics for each valuation category, guideposts, pathways and speed bumps follow.

### **GUIDEPOST 1 – EXCLUSION OF MINERAL INTERESTS AS A RESOURCE**

Exclusions of mineral interest resource value fall into two basic categories: 1) exclusion associated

with location and 2) exclusion associated with status.

#### *Exclusions Associated With Location*

##### **Home property exclusion.**

In the home property exclusion, mineral rights associated with the home property are considered along with the surface rights and are excluded as a separate resource.<sup>1</sup> Their valuation is concurrent with that of the home property, such that if the home property is valued as a resource, the value of the mineral interest is already considered included; if the home property is excluded as a resource, so is the mineral interest.

**Tribal lands exclusion.** In the tribal lands exclusion, for any individual (and spouse, if any) who is

of Indian descent from a federally recognized Indian tribe, any interest in land that is held in trust by the United States for an individual Indian or tribe – or that is held by an individual Indian or tribe and can only be sold, transferred or otherwise disposed of with the approval of other individuals, their tribe or an agency of the federal government – shall be excluded from resource determinations.<sup>2</sup>

#### *Exclusions Associated With Status*

##### **Royalty-producing mineral interest exclusion (up to \$6,000).**

In the 6%/\$6,000 royalty-producing interest exclusion, up to a \$6,000 resource value of the mineral interest is excluded from consideration. Mineral rights not

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Valuations take into consideration not only the interests' current production but also the future potential for production. Because of this, open (or unleased) mineral interests that have never produced are often attributed a higher resource value than some currently producing.

associated with home property that are income-producing are considered in the same way as income-producing property.<sup>3</sup> Where mineral rights are nontrade or nonbusiness property, up to \$6,000 of the equity value is excluded as a resource if the property produces a net annual return equal to at least 6% of the excluded equity, and any portion of the property's equity value in excess of \$6,000 is a countable resource.<sup>4</sup> (This exclusion applies to royalty-producing mineral interests, but not mineral interests that are leased and have never been royalty producing.)

**Legal impediment exclusion.** In the legal impediment exclusion, only those resources available for current use or those that the member can convert for current use (no legal impediment involved) are considered countable resources. Legal impediments include but are not limited to clearing an estate, probate, petition to sell or appointment of legal guardian and present subject assets to exclusion from resource calculations,

with the caveat that, "Generally, a resource is considered unavailable if there is a legal impediment to overcome. However, the member must agree to pursue all reasonable steps to initiate legal action within thirty (30) days. While the legal action is in process, the resource is considered unavailable."<sup>5</sup> Especially with regard to mineral interests in which ownership may be extensively divided into very small interests over the years, it is important to note that if a determination is made and documented that the cost of making a resource available exceeds the gain, the member will not be required to pursue action to make it available.

### GUIDEPOST 2 – EXTERNAL PROFESSIONAL MINERAL INTEREST VALUATION

Applicants have the opportunity to present mineral interest valuations from professionals knowledgeable in the area, pursuant to the Oklahoma Administrative Code, which designates not only that "since evaluation and salability of mineral

rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources," but also, "actual offers of purchase are used when established as a legitimate offer through a collateral source."<sup>3</sup>

When considering this path for valuation, it is also important to weigh the investment of client funds in a paid valuation from an external professional against the anticipated attributable resource value expected in accordance with Oklahoma Human Services' current formulas for calculation.

### GUIDEPOST 3 – AGENCY MINERAL INTEREST VALUATION

When an applicant does not supply an external mineral interest valuation, they may submit mineral interest ownership documentation so that Oklahoma Human Services may provide them with a valuation. These valuations employ formulas for calculating the fair market value of mineral interests in three categories or, for the purposes of this article, "pathways." Valuations take into consideration not only the interests' current production but also the future potential for production. Because of this, open (or unleased) mineral interests that have never produced are often attributed a higher resource value than some currently producing. This can be quite surprising to applicants, especially those who have held mineral interests for several decades with no offers of lease or purchase.

*Pathway 1 – The Royalty-Producing Mineral Interest Valuation Formula*  
**Fair market value = (gross royalties/12) x 36.** For example,

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a single mineral interest wholly owned by an individual applicant documented by a Form 1099 to be producing royalties of \$1,200 in the most recent year would be viewed as having a fair market value of \$3,600 ((gross royalties/12) x 36 = fair market value) but would result in an attributable resource value of \$0 due to the 6%/\$6,000 exclusion for nonbusiness income-producing property.

On the other hand, a single mineral interest wholly owned by an individual applicant documented by a Form 1099 to be producing royalties of \$4,000 in the most recent year would be viewed as having a fair market value of \$12,000 and an attributable resource value of \$6,000 (assuming no other nonbusiness income-producing property contributed countable income toward the \$6,000 exclusion limit).

*Important documentation required for pathway 1: documentation that contains the legal description of the mineral interest, the Form 1099 issued by the oil company in the year preceding the client's application or the year preceding the annual review and documentation of any royalties currently held in suspense.*

*Pathway 2 – The Open (Unleased) Mineral Interest Valuation Formula*

**Fair market value = (most common lease bonus per acre x number of net mineral acres).** On the other hand, for open (unleased) mineral interests, the fair market value is determined by multiplying the number of net mineral acres and the most common lease bonus for the county as reported by the corresponding issue of the U.S. Lease Price Report. For example, a 40-net-mineral-acre interest that has never been leased in a county

with a most common lease bonus of \$1,200 would be evaluated to have a fair market value (and attributable resource value) of \$48,000.

A similar never-leased mineral interest in another county, however, with a most common lease bonus of \$25 per acre, would be evaluated to have a fair market value (and attributable resource value) of \$1,000.

For the calculation of fair market value of open mineral interests, providing accurate documentation of the number of net mineral acres is especially important. It is not uncommon for mineral interests to be acquired through estate and familial distribution leading to divisions into smaller and smaller interests and for transfer documents to be silent in regard to the number of net mineral acres being transferred. Locating and providing this information can require additional work but can prove worthwhile. For example, if the 40-acre mineral interest in the county with the \$1,200 lease bonus was actually inherited by and divided equally among 10 heirs, this would reduce the number of net mineral acres to four each and consequently reduce the applicant's associated resource value to \$4,800 rather than \$48,000.

*Important documentation required for pathway 2: documentation that contains the legal description of the mineral interest, inclusive of the number of net mineral acres. Presenting accurate information regarding the number of net mineral acres is especially important for accurate valuation in this type of interest.*

*Pathway 3 – The Leased Mineral Interest Valuation Formula*

**Fair market value = (gross lease bonus x 1.5).** For leased mineral interests, as a general rule, the fair

market valuation formula is the product of 1.5 times the most recent lease bonus. (The agency might retain the ability to exercise some discretion in contemplation of the occurrence of a zero-dollar lease bonus, though this has not been well established as of the writing of this article.) In general, a mineral interest wholly owned by an individual applicant most recently leased for \$1,600 would be evaluated to have a fair market value (and attributable resource value) of \$2,400.

The 6%/\$6,000 resource value exclusion does not apply to mineral interests that are leased but have never paid royalties.

*Important documentation required for pathway 3: documentation that lists the legal description of the mineral interest and the Form 1099 issued by the oil company in the year the lease bonus was paid.*

*A Road Less Traveled – The Life Estate Impact Valuation Formula*

**Fair market value = (full resource value x life estate decimal amount).** Notably, if an applicant owns only a life estate in a mineral interest, the evaluated fair market value is reduced by a specified formula multiplying the fair market value of the mineral interest by the decimal amount listed for the age of the applicant in accordance with the State Medicaid Manual – Life Estate and Remainder Interest Table.<sup>6</sup>

For example, if Ms. Jones, age 78, owns only a life estate interest in an open mineral interest that would otherwise have a fair market value of \$10,000 and the corresponding decimal amount for age 78 is 0.47049, the resulting resource value for this interest would be \$4,704.90.

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## ADDITIONAL MAPPING FOR ALL PATHS

Situations do sometimes occur in which valuations are submitted on behalf of applicants that are actually higher than what the agency-determined resource value would have been. For this reason, reviewing current valuation standards and, if applicable, the relevant U.S. Lease Price Report can be of significant benefit to applicants. Additionally, collection and submission of associated documentation should be started as early as possible in case challenges in finding information, such as the number of net mineral acres, should arise.

Should an applicant disagree with an evaluated mineral interest resource value, they may submit an external valuation or additional documentation for review or, if the valuation negatively impacts their eligibility for benefits, request a fair hearing.

## AVOIDING SPEED BUMPS

- Written documentation of the legal description is necessary for each mineral interest (*i.e.*, leases, deeds, wills, division orders). Copies are often obtainable from the county clerk or online at [www.OKCountyRecords.com](http://www.OKCountyRecords.com).
- Resource valuation is based on royalty production. So even when there is no Form 1099 issued, if royalties were produced, documentation should be obtained and supplied.
- Royalty owners' accounts can go into "suspense" if they fail to cash their checks, meaning the company might stop sending the royalty checks. For example, if someone moves, checks

may be marked "do not forward," preventing them from being delivered even if a change of address has been filed with the Postal Service. A change of address is generally required to be submitted directly to the oil and gas company. Accounts may even have thousands of dollars in suspense that, if discovered, may be distributed to an applicant.

- Requests for information from oil and gas companies can be made via email, often with quick response.<sup>7</sup>
- Communication with oil and gas companies is often most effective and efficient when done by email.<sup>8</sup>
- Oil and gas companies do respond to owner inquiries, but they often work with thousands of (or more) royalty owners. Sometimes it takes time, but almost always, a response should be obtainable. In unusual circumstances where a company is unreachable, contacting the Oklahoma Corporation Commission for additional information can often be helpful.

## CONCLUSION

Oklahoma's history is steeped in stories of families pulled out of hard times – some even catapulted to wealth – through mineral interest ownership. Interests are often passed from generation to generation in hopes that the legacy will someday be a producing well, and mineral interest ownership is not uncommon in our state, even for those with modest resources. Understanding the valuation of mineral interests is crucial for

Medicaid eligibility for long-term care services, but it is useful in other regards as well. Through this comprehensive overview, practitioners can help clients navigate a path ensuring their mineral interests are managed well.

## ABOUT THE AUTHOR



Shannon D. Smith is a former Oklahoma Human Services Medicaid programs analyst responsible for reviewing mineral interest resource valuations for long-term care applicants. She is an Oklahoma attorney practicing in the area of e-discovery and is currently completing the nine-month MIT Professional Education Professional Certificate Program in Digital Transformation. Her recent experience includes work with large-scale litigation involving artificial intelligence, mergers and acquisitions, competition law, international terrorism, government defense contracting and biotech hedge fund arbitration. She also serves as an assistant district attorney for Comanche County for civil matters.

## ENDNOTES

1. Oklahoma Administrative Code 317:35-5-41.1 (a)(9).
2. Oklahoma Administrative Code 317:35-5-41.12(c)(3).
3. Oklahoma Administrative Code 317:35-5-41.1. (b)(1).
4. Oklahoma Administrative Code 317:35-5-41.12 (c)(3).
5. Oklahoma Administrative Code 317:35-5-41 (6)(b).
6. Oklahoma Administrative Code 317:35-5-41.1 (b)(10)(A).
7. For easy reference, refer to the article "Long Term Care (LTC): Letter to Oil / Gas Company (Mineral Rights)." Available at <https://bit.ly/3U6Lxor>.
8. A partial list of oil and gas company email addresses can be found at <https://bit.ly/3vld85L>.



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# The Role of the General Counsel in Managing Risk

By Charlene Wright

**E**NERGY AND CRITICAL INFRASTRUCTURE COMPANIES are among the most highly regulated entities in the United States. In addition to multilevel regulatory oversight, these companies face ever-increasing scrutiny from investors, customers and the public at large. Stakeholders expect these companies to implement robust processes to effectively manage risk. With mounting pressure for increased transparency, it is crucial that companies adopt integrated risk management throughout their enterprise, where the general counsel plays a key role.

## GENERAL COUNSEL IS UNIQUELY QUALIFIED TO UNDERSTAND THE IMPORTANCE OF NOTICE OF RISK

A company's failure to adequately address known risks or to avoid foreseeable consequences can have devastating results. The industry's collective experience is littered with examples of escalated enforcement and litigation arising from allegations that a company's leadership did not properly address known risks. Consider the following examples.

### *PG&E Camp Fire*

In November 2018, the deadliest wildfire in California's history was started by a failure of a 99-year-old electrical tower (Tower 27/222), killing 85 people and destroying 19,000 buildings. In 2020, Pacific

Gas and Electric Co. (PG&E) plead guilty to 84 separate counts of involuntary manslaughter and one felony count of unlawfully starting a fire. PG&E received the maximum allowable fine of \$3.5 million and agreed to a \$25.5 billion settlement fund.<sup>1</sup>

A year-long investigation conducted by the Butte County district attorney concluded that outdated power lines had sparked the fire known as the "Camp Fire." The focus of the investigation and subsequent public outcry centered on allegations that the company had ignored known risks. The media reported: "Long before the failure suspected in the Paradise fire, a company email had noted that some of PG&E's structures in the area, known for fierce winds, were at risk of collapse. It reported corrosion of one tower so severe

that it endangered crews trying to repair the tower. The company's own guidelines put Tower 27/222 a quarter-century beyond its useful life – but the tower remained."<sup>2</sup>

### *Colonial Pipeline Cyberattack*

Throughout 2020, the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an inspection of Colonial Pipeline's customer relationship management (CRM) procedures and records for locations in New Jersey, Louisiana, North Carolina and Georgia. Shortly after the inspections concluded, PHMSA gave notice to Colonial that it was in probable violation of several pipeline safety regulations. Among the findings noted in PHMSA's Notice of Probable Violation (NOPV) were Colonial failed to conduct proper point-to-point

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verification and failed to prepare an adequate communication plan for manual operation of the pipeline.<sup>3</sup> Less than a year later, the lack of a plan for manual operation is alleged to have contributed to the national impacts when the pipeline remained out of service after a cyberattack. PHMSA proposed a civil penalty close to \$1 million.<sup>4</sup> “The 2021 Colonial Pipeline incident reminds us all that meeting regulatory standards designed to mitigate risk to the public is an imperative,” said PHMSA Deputy Administrator Tristan Brown.<sup>5</sup>

*Hawaiian Electric Co.  
(Maui Wildfires)*

In August 2023, a wildfire broke out on Maui that killed over 100 people, and rescue efforts were still underway in Hawaii as of September 2023. Maui County filed a lawsuit against Hawaii Electric Co. (HECO). The lawsuit alleges that HECO was warned of the circumstances that caused the fire a year earlier, referring to a 2022 shareholder report stating that climate change and the resulting effects would be a substantial factor to consider as wildfires



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increased across the state. Maui County has argued that HECO should have de-electrified many of its electrical wires as Hurricane Dora neared Hawaii with Category 4 winds forecast to hit Maui the day of the fire. The expected cost of the Maui wildfires is estimated at around \$5.52 billion to rebuild and does not include any lawsuits that may arise in the coming months and years. HECO has denied responsibility, but the full impact of this incident may not be known for years.

#### *Navitas Pipeline Incident*

In 2018, a gas line owned by Navitas Midstream LLC in Midland, Texas, exploded and caused a fire that burned for over an hour, impacting another gas line directly above the Navitas line, which then caused another explosion that killed one Navitas employee and grievously injured first responders. Navitas had 300 leaks reported in the three years they had owned the line prior to the incident, giving rise to allegations of ample notice without mitigating the risk.

These and similar incidents highlight the need for companies to properly identify inherent risks, implement controls and actively monitor and manage residual risk. Enterprise risk management is ineffective if the process happens once a year and sits on a shelf. General counsel has a unique role in this process. As a member of senior management and an advisor to the board, the general counsel's role entails more than merely managing legal risks. General counsel also validates their enterprise's risk framework, governs risk processes, understands their company's material risks and

controls and verifies that external facing statements are accurate, reasonable and consistent with their company's actions.

#### **GENERAL COUNSEL ADDS PERSPECTIVE THAT TECHNICAL SUBJECT MATTER EXPERTS (SMES) MAY LACK**

Functional groups tend to view risk from tactical and siloed perspectives. While general counsel cannot, and would not desire to, replace SMEs, the nature of the general counsel's role provides an enterprise-wide field of vision. Some legal departments treat risk management as a compliance issue, but not all risks can be managed through a rules-based paradigm. Additionally, not all risks an enterprise faces will fit neatly into a predefined compliance program.

Asking the right questions can help in avoiding unintended consequences. For example, prioritizing work or replacement of assets involves technical expertise, but justifying *which* assets are prioritized and documenting how those decisions were made can save a company from allegations of ignoring risk or failing to evaluate consequences. Companies can survive mistakes but will have a more difficult time defending action or inaction absent a robust process supporting the approach taken. The reasonableness of that process can be the difference between a regrettable incident and a devastating, company-ending failure. Beyond asset management and integrity management, the general counsel has a view into operational, budgetary and regulatory workforce management. This enterprise-wide perspective uniquely avails the general counsel of the

opportunity to anticipate risks and threats, allowing the company to respond more efficiently and economically than when it must rely on after-the-fact issue management.

#### **GENERAL COUNSEL IS THE BEST POSITION TO UNDERSTAND THAT WORDS MATTER**

The stakes have never been higher for ensuring clear and effective communication.

Environmental, social and governance (ESG) disclosures, corporate responsibility messaging and environmental reporting continue to be under a bright spotlight. In some cases, the desire of companies to jump on the ESG bandwagon put messaging before actual programs and created risk for companies whose commitments were principally aspirational. ESG ratings, with varying models and unvalidated scoring, gave rise to a proliferation of sustainability messaging and broad commitments to green and clean practices without a solid connection to process, practices and measurable progress.

In response to wide-ranging variations in disclosures and the perceived difficulty for investors to assess climate-related financial risks, the U.S. Securities and Exchange Commission (SEC) published a final rule to standardize climate-related disclosures for investors on March 6, 2024. The rule was built upon the Taskforce on Climate-Related Financial Disclosures (TCFD) framework and requires disclosure of material information related to the management of climate-related risks, with metrics including greenhouse gas emissions.<sup>6</sup>

Greenwashing is now a dictionary-defined term<sup>7</sup> and part of our

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vernacular. From unsupported claims to overexaggerated environmental benefits, corporations have been called out for allegations of deceptive and misleading messaging in advertising and mainstream corporate reporting. Until 2017, the total number of climate litigation cases was 884 across a total of 24 countries, with 654 of these cases being in the United States.<sup>8</sup> As of July 1, 2020, the number of cases has nearly doubled, with 1,200 cases filed in the United States and 350 filed in 37 other countries combined.<sup>9</sup> The litigation includes both claims around failure to adequately disclose material climate change risks to investors and claims of false or misleading statements about efforts to address environmental and climate-related impacts.

Even well-intentioned environmental commitments can backfire if they are not tied to demonstrable investment and measurable progress. In the context of hyperpoliticized attention being paid to fossil fuel companies, messaging must be examined with a critical eye. The general counsel is often in the best position to ask the right questions to map messaging to programs, practices and metrics. Simply put, the general counsel should evaluate whether the messaging passes the red-face test.

### **GENERAL COUNSEL UNDERSTANDS HOW TO MANAGE ETHICAL OBLIGATIONS**

Effective communication and transparency with regulators are essential. However, multiple channels for communication may create risk, particularly where personal and professional lines become blurred. Emails and texts

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In the context of hyperpoliticized attention being paid to fossil fuel companies, messaging must be examined with a critical eye. The general counsel is often in the best position to ask the right questions to map messaging to programs, practices and metrics.

can trend toward more informal communication than traditional correspondence. Without guardrails in place to define and enforce rules of engagement, agency staff and company personnel may inadvertently step over ethical lines.

There have been several instances covered in the media purporting to demonstrate inappropriate familiarity between regulated companies and regulators. For example, in the aftermath of the PG&E San Bruno pipeline incident, thousands of emails were uncovered between high-ranking California Public Utilities Commission (CPUC) staff and PG&E regulatory affairs officers. Some of the emails included PG&E asking for off-the-record favors, such as a change of focus for commission audits. Other emails included PG&E's former vice president of regulatory affairs making dinner invitations and discussing sharing bottles of wine with the CPUC president. The communications led to significant penalties for PG&E and forced resignations for PG&E and CPUC.<sup>10</sup>

In 2018, texts were disclosed between an Arizona corporation commissioner and Arizona Public Service lobbyists, where the commissioner appeared to commiserate and strategize with the utility. The texts were characterized by the media as "playing digital footsie with those they regulate."<sup>11</sup> The long-term consequences for the energy industry are that these cases shake the public's trust and create avoidable obstacles to achieving corporate goals.

No one is positioned better than the general counsel to provide governance for regulatory interactions and, in doing so, advise on how to avoid these potential ethical conflicts. Controls to address this risk should include training, written policy and internal oversight.

### **GENERAL COUNSEL CAN DETECT SHINY OBJECT SYNDROME**

The development of novel ideas, programs and practices are good, but they can have unintended consequences. Where company action

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is driven by a perceived need to match or outpace efforts taken at peer companies, the risk of producing unintended consequences rises dramatically. Assessing risk in advance of pursuing a change allows for the evaluation of the true cost against anticipated benefits for the specific enterprise contemplating the change. What works well for one company may not work well for another, and identifying the risks related to a new project or commitment from an organizational, operational and stakeholder perspective is critical.

Committing to a sea change is easy to say but hard to properly implement. Multiyear commitments of resources can compete with other corporate goals and objectives. General counsel should be asking critical questions on the management of change *in advance* of any bold statements committing to a path forward. Understanding who will be impacted, what work will change and what the potential risks are will be the key to success. Establishing and maintaining realistic expectations around how

long a program will take to implement and planning stage gates to determine next steps safeguards against prematurely abandoning an initiative for the next shiny object. A fulsome analysis of the project components and budget variables is needed to manage messaging so the company does not have to walk back commitments or projections in response to foreseeable complications.

### HOW TO ENGAGE WITH INTERNAL CLIENTS ABOUT RISK MANAGEMENT

It is important for the general counsel to consistently think beyond defensibility to strategic, holistic, integrated risk management. The first step in that process is to gather information to determine the current state of your company's risk management. Start with the basics. Determine how many risk registers the company currently maintains. The answer may surprise you. Many companies have multiple risk registers that have been created in functional departments or corporate

divisions. Multiple risk registers may include conflicting data and competing priorities. These siloed risk registers are evidence of the company's notice of risks that may never have been escalated to senior leadership in a meaningful way. They may demonstrate a lack of understanding about relative risk, use over or underrated risk scoring and may have been created to make a case for funding. *Importantly, they are generally discoverable, and the siloed nature in which they are maintained does nothing to absolve the company of having been on notice about the entire contents of each risk register.*

Dive into the process to determine the effectiveness of the company's risk management process. Here are some questions to get you started:

- What is the current risk process for identifying, assessing, scoring, prioritizing and managing risk?
- How are changes to risk management – including controls – evaluated, communicated and implemented?
- How integrated are risk decisions?
- Who is involved and at what level?
- How is the risk-management process governed? Are the doers also accountable for governance?
- Are there multiple processes to determine materiality, and who manages that process?
- What does assurance look like enterprise-wide? Are there independent processes in place to determine whether existing controls



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have been implemented as designed and are effectively addressing risk?

- Effective risk management does not happen once a year. Ask questions to verify how risk is managed and monitored on a *daily, weekly, monthly and quarterly* basis. How is it documented? What tools facilitate monitoring of risk by senior leadership?

## CONCLUSION

Regardless of whether your company is taking the first step or the 100th step at maturing an integrated risk management process across the enterprise, the work is valuable. At every stage, it is worth the time and resources to affect outcomes proactively and safeguard strategic goals. By implementing and monitoring controls, the company can reduce the likelihood of a risk event as well as mitigate potential consequences. For a general counsel who has not historically had a seat at the table to discuss the company's risk

processes, consider this your call to action. Your duties to the company as a member of senior management and as an advisor to the board require you to have visibility of potential vulnerabilities across the enterprise. It is no longer enough to validate compliance and manage litigation. Stakeholders are more sophisticated than ever before. They know the questions to ask. Be prepared to answer the question, *"How do you know the company is effectively managing risk?"*

## ABOUT THE AUTHOR



Charlene Wright is managing partner of Wright & Associates, a law firm focused on environmental, regulatory, transactional, risk management, corporate governance, compliance and ethics, and litigation on behalf of energy and infrastructure companies. She is licensed to practice in Texas, Oklahoma, Missouri, Kansas and Illinois and has handled litigation in 14 states in both federal and state courts.

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# SUMMER SCHOOL IS IN SESSION

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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

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Most activities will take place at the Embassy Suites in Norman, 2501 Conference Drive.

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Fees do not include hotel accommodations, which must be booked separately. To reserve a room, call 1-800-EMBASSY and mention the Oklahoma Bar Association 2024 Conference (or group code OBA) or visit <https://bit.ly/3UdWW4B> to book online. The deadline to reserve a room under the room block is June 17.

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OPTIONAL CLE SUBTOTAL \$ \_\_\_\_\_

## LUNCHEONS & EVENTS

OU College of Law Luncheon - Wednesday, July 10

OU luncheon registration is available at 405-325-5395 or johnsonsa@ou.edu

TU College of Law Luncheon - Wednesday, July 10

TU luncheon registration is available at TULawAlumni@utulsa.edu

OCU School of Law Luncheon - Wednesday, July 10

OCU luncheon registration is available at 405-208-7102

Annual Luncheon - Thursday, July 11

\_\_\_\_\_ # of tickets at \$75 \$ \_\_\_\_\_

President's Barristers' Ball Guest - Thursday, July 11

\_\_\_\_\_ # of tickets at \$75 \$ \_\_\_\_\_

Delegates Breakfast for nondelegates and alternates - Friday, July 12

\_\_\_\_\_ # of tickets at \$40 \$ \_\_\_\_\_

Delegates Breakfast for delegates (no charge) - Friday, July 12

(check if attending as a delegate)

LUNCHEONS & EVENTS SUBTOTAL \$ \_\_\_\_\_

## PAYMENT

Check enclosed: Payable to Oklahoma Bar Association

TOTAL COST \$ \_\_\_\_\_

Credit Card:  Visa  Mastercard  American Express  Discover

Card # \_\_\_\_\_ CVV \_\_\_\_\_ Exp. Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**CHECK [WWW.OKBAR.ORG/ANNUALMEETING](http://WWW.OKBAR.ORG/ANNUALMEETING) FOR UPDATES**





**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!**

**REGISTER AND VIEW EVENT DETAILS AT [WWW.OKBAR.ORG/ANNUALMEETING](http://WWW.OKBAR.ORG/ANNUALMEETING)**





## **SPONSOR THE OBA ANNUAL MEETING!**

The OBA is excited for you to join us for the 2024 OBA Annual Meeting!

Connect with attorneys from across the state by becoming a sponsor or vendor. This is a great way to network and share your product or service.

**The deadline to apply is Saturday, June 1.**  
Please note that space is limited.

Visit [www.okbar.org/annualmeeting](http://www.okbar.org/annualmeeting) for more information.

## **SPECIAL THANKS TO OUR SPONSORS AND VENDORS**

### **CO-SPONSOR**



**OKLAHOMA ATTORNEYS**  
MUTUAL INSURANCE COMPANY

### **BRONZE SPONSOR**

**LAWPAY & mycase**

### **VENDORS**

Beyond Square One | Clear Numbers Bookkeeping | Coparent Academy  
Imprimatur Press

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



**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



**KENTON BRICE**

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

**REGISTER AND VIEW EVENT DETAILS AT [WWW.OKBAR.ORG/ANNUALMEETING](http://WWW.OKBAR.ORG/ANNUALMEETING)**

More speakers and topics to be announced soon! *Programming is subject to change.*



# 2025 OBA BOARD OF GOVERNORS VACANCIES

Nominating Petition Deadline: 5 p.m. Wednesday, May 8

## OFFICERS

### President-Elect

Current: D. Kenyon Williams Jr., Sperry  
Mr. Williams automatically becomes OBA president Jan. 1, 2025.  
(One-year term: 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: **Rhiannon K. Thoreson, Broken Arrow**

## 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.**

## BOARD OF GOVERNORS

### Member at Large

**Rhiannon K. Thoreson, Broken Arrow**

Nominating petitions have been filed nominating Rhiannon K. Thoreson, Broken Arrow, for member at large of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2025. Fifty of the names thereon are set forth below:

Anne Laurie Koller, Ashley Holbrook Leavitt, Eddie Lynn Carr, Ashley P. Gregg, Breanne Markey Gordon, Margo Elizabeth Shipley, Vanessa Laurine Lock, Candace Merifield, Melissa Shepard Taylor, Andrew Michael King, Kathryn Lorraine Sawyer, Joanna Kathleen Murphy, Bryce Anthony Hill, Amanda Mayo Finch, Denise I. Deason-Toyne, Grace Elizabeth Dawkins, Chrissi Renae Nimmo, Gina J. Carrigan-St. Clair, Joseph Lumpkin Hull III, Joseph Michael Norwood, Elizabeth Kathleen Sherwood, Rachel Lynne Farrar, Keri Denman Palacios, Charles Cameron McCaskey, Cheryl Anne Jackson, Jared Kent Nelson, Nicole Dawn Herron, Susan Carns Curtiss, Micah Joseph Felton, Phillip C. Hawkins, Susan Hamilton Jones, Richard Sherwin Toon Jr., Carrie Lynn Allen-Cole, C. Magan Graham, Scott Robert Helton, Allie Lynn Palmer, Bethany Renee Turney, Bria Alysse Hanlon, Jennifer Ashley Barnett, Michael Paul Taubman, Catherine Zilahy Welsh, Kobi D'Anne Cook, Jim Charles McGough Jr., James Travis Barnett, Guy W. Tucker Jr., Sofia Miranda, Rebekah Martin Burchfiel, Katheryn Cole Bell, Jennifer Lynn Tunder and Jennifer Ary Brown.

**A total of 51 signatures appear on the petitions.**

# Proposed Dues Increase: Stay Up or Play Catch-Up

By John Morris Williams

**I**BEGAN MY TENURE AT THE OBA on May 1, 2003. As excited as I was to assume the position, I soon learned there were some serious challenges at hand. The most pressing issues were directly related to the financial position of the association. The financial reserves were so thin that CLE collections had to be closely monitored to ensure we could meet payroll.

There were absolutely no resources to fix the leaking roof, remove 15,000 square feet of asbestos or make major technological updates. In sum, the place was broken, dirty, had years of deferred maintenance, and even the bathrooms smelled bad.

In 2004, the OBA increased dues from \$175 to \$275 and still had the cheapest bar dues in the country for all the functions the OBA performs. A few states may look cheaper, but when you see their add-ons, the

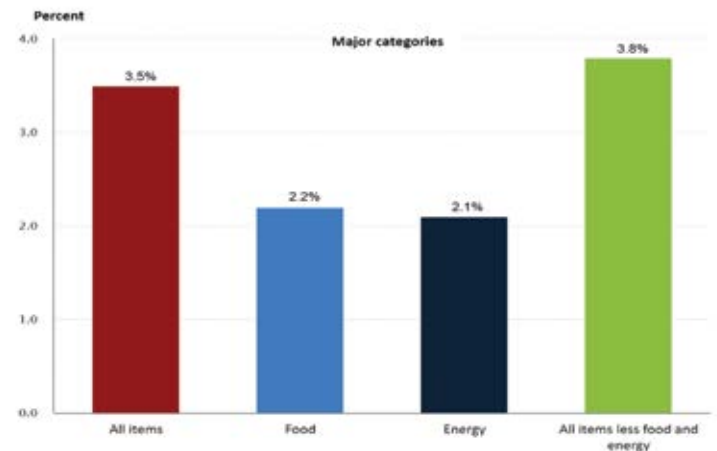
cost of licensing has always been a bargain in Oklahoma.

In today's dollars, the current dues have lost most of their value. Yet, the OBA operated for 20 years on what was predicted at the time of the last dues increase to only last six years. The OBA has always been conservative with dues dollars and provided great value. Much of this has to do with the innovation and creativity of the staff. Speaking of staff, the OBA actually has fewer employees

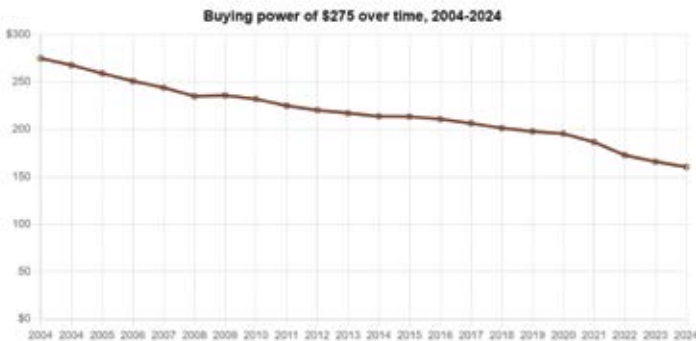
than when I first came to the OBA, although the membership has increased by more than 3,000.

After the last dues increase, we spent 10 years playing catch-up.

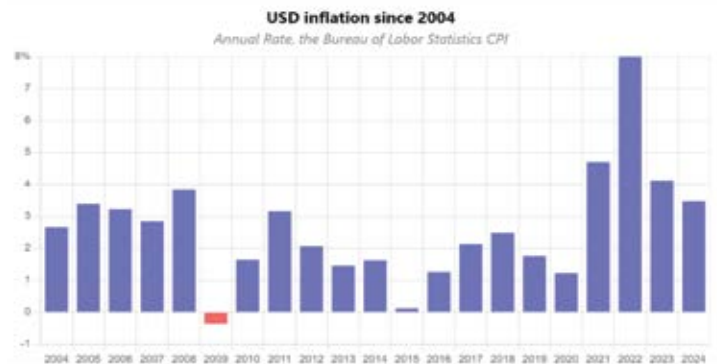
12-month percentage change, Consumer Price Index, selected categories, March 2024, not seasonally adjusted



This graph demonstrates the percentage increase of consumer prices over a period of one year in several categories of goods. This graph has been modified to display precise percentage increases. Source: U.S. Bureau of Labor Statistics, <https://bit.ly/3QfAoiM>.



This graph demonstrates how the buying power of \$275 has declined over the past 20 years. Available from <https://bit.ly/3UiiwVq>.



This graph shows the annual rate of inflation since 2004. In 2004, the rate of inflation was 2.66%, compared to 3.48% in 2024. Available from <https://bit.ly/3UiiwVq>.

The deferred maintenance costs were huge, the updates to technology were costly, and we needed to upgrade our salary schedule to ensure we could keep the talented staff who had stayed with us during the lean years.

The OBA is now at a crossroads. The choice is either to stay with meeting the current needs or to let things decline and later play catch-up. I have worked for three different organizations, and my experience has been that playing catch-up costs significantly more in the end. For example, currently, the 20-year-old roof needs replacing. Defer that, and next, you will be paying repair costs for water damage, some of which has already occurred. The current association management software that allows members to perform multiple tasks online has aged and will not support new functionalities that would enhance member online services. In the end, the OBA will spend more, and members' dollars will lose value if a dues increase does not occur now. You can pay now or later. Later costs more.

I think I earned the reputation of being tight with a dollar. First, I always considered that the money belonged to the members, and I had a fiduciary duty to spend it wisely. Second, I paid dues just like everyone else. Third, the finances are ultimately controlled by the Supreme Court, and every

**NOTICE OF HEARING ON  
PROPOSED DUES INCREASE**

---

**Monday, May 20, 2024 | 4 p.m.  
Oklahoma Bar Center  
1901 N. Lincoln Blvd.  
Oklahoma City**

Following careful analysis and consideration of the association's long-term financial outlook, the OBA Board of Governors has proposed that, effective Jan. 1, 2025, membership dues be increased from \$275 to \$400 for those who have been members more than three years and from \$137.50 to \$200 for those who have been members for three years or less. If approved by the OBA House of Delegates, this would be the first increase in OBA membership dues in 20 years.

A public hearing has been set for Monday, May 20, 2024, from 4-5 p.m. In addition, members are invited to make written comments to OBA President Miles Pringle, P.O. Box 53036, Oklahoma City, OK 73152, or by email to [president@okbar.org](mailto:president@okbar.org).

single penny of expenses has to be justified.

It's time to stay up. In today's dollars, it would take \$451 to be equivalent to the \$275 dues in 2004. When taking inflation into consideration, OBA members have actually had a dues decrease every year for the last 20 years. It's now time to catch up and stay up or eventually play catch-up at a significantly greater cost.

It is my association, too. My experience tells me we need to catch up with inflation and increase the dues to \$400. We will still be paying less in real dollars than the last dues increase in 2004. It's a bargain too good to pass up.

---

*John Morris Williams served as OBA executive director from 2003 to 2022.*



OKLAHOMA BAR ASSOCIATION



# BAR BENEFITS

**You make a difference.  
OBA member benefits  
make it easier.**

## **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)**

WORTH OVER  
**\$2,600**

# WHAT'S THE **VALUE** OF YOUR OBA MEMBERSHIP?



## **FASTCASE**

Online legal research software with unlimited usage, customer service and printing

**\$995/YR**



## **CONTINUING LEGAL EDUCATION**

Hundreds of seminars, webcasts and audio programs

**AT LEAST \$600/YR**



## **OKLAHOMA BAR JOURNAL**

Printed magazine of practice area articles, member news and bar updates

**\$75/YR**



## **ETHICS COUNSEL**

Confidential assistance with ethical questions and inquiries

**\$250/HR**



## **MANAGEMENT ASSISTANCE PROGRAM**

Business and management help through organization and operation assistance

**\$150/HR**



## **LAWYERS HELPING LAWYERS**

Monthly discussion groups and up to six hours of counseling

**\$150/HR**



## **LEXOLOGY**

Personalized daily newsfeed of legal updates with research tools

**\$500/YR**



## **COURTS & MORE**

Weekly news digest highlighting appellate court information and legal news

**\$100/YEAR**

## **PLUS...**

### **NETWORKING OPPORTUNITIES**

#### **Leadership and volunteering** –

Opportunities to serve in committees, sections, boards and commissions.

**Events** – Network and earn CLE at Annual Meeting and Solo & Small Firm.

**Young Lawyers Division** – Professional service network for lawyers who have been practicing for less than 10 years

### **PROFESSIONALISM SERVICES**

**Sections** – Professional development tailored to your practice area and new contacts across the state

**LawPay** – Credit card processing service specially designed for attorneys

**Find A Lawyer** – Free public directory sorting lawyers by practice and location

### **MEMBERSHIP DISCOUNTS**

Discounts are available on services like Clio, Ruby, Smokeball, CaseText, Tabs3, TimeSolv and more! Just log into MyOKBar and select Practice Management Software Benefits.

FIND MORE AT **OKBAR.ORG/MEMBERBENEFITS**

# Contest Winners Highlights

**T**HE OBA LAW DAY COMMITTEE would like to thank Oklahoma educators, students and their families for participating in the 2024 Law Day Contest. This year, 1,696 students from 66 towns and more than 120 schools and homeschool groups entered the contest.

First- through 12th-grade students demonstrated their knowledge of the history and concepts of the theme “Voices of Democracy” through essays, creative writing and multimedia art. Pre-K and kindergarten students were given a choice of coloring activity pages related to the theme, allowing them to show off their budding creative and writing abilities. For both elementary and secondary students, the contest allowed them to explore how in democracies, the people rule, and we must speak up and vote in elections to maintain democracy and the rule of law.

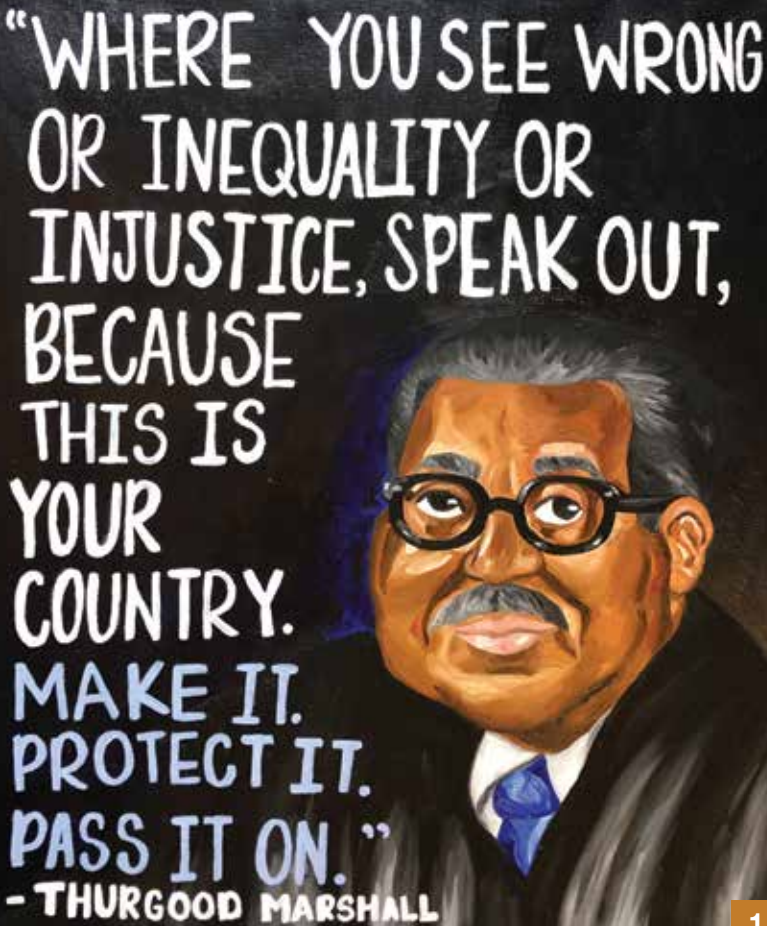
## DEMOCRACY FROM THE PERSPECTIVE OF A TIME TRAVELER

Adrenaline rushed through my veins as I stood before the vibrating frame of the time-travel portal. I could feel the metallic humming deep in my core, and with every step I took towards the threshold my heart quickened, matching its pulse. In mere minutes, I would be transported to arguably the most crucial era that laid the foundation for modern-day America. I hesitated before stepping towards the portal, mentally flipping through the pages of my history textbook at home. The air surrounding the portal seemed to shimmer more and more the closer I got to the portal, until suddenly I felt myself being sucked into it, a kaleidoscope of colors and lights engulfing me. The world around me warped and twisted, and it felt as though all of my limbs were being pulled in a different direction all at once. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**Lily Nguyen**  
Grand Prize  
Classen School of Advanced  
Studies at Northeast,  
Oklahoma City





### THE LOST STORIES FROM HISTORY

2

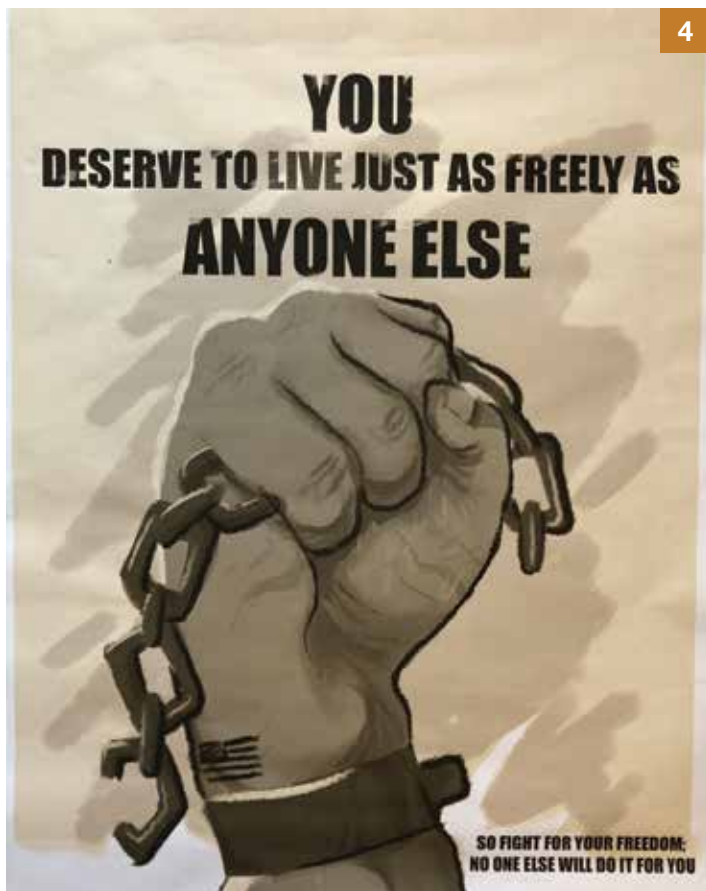
The sky's engulfed with light, blinding everything around me. I wake up sweating, wondering about the absurd dreams that fill my mind this time. I look at the clock seeing 6 am bold across the face, peering at me like a cat. I lazily leave my bed, and put on my fuzzy green slippers. As I walk to fulfill that longing for a single drip of coffee, I stop suddenly, dead in my tracks. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

### ESTABLISHING VOICES OF DEMOCRACY: POST-CIVIL WAR AMERICAN REFORM

"Our fathers believed that if this noble view of the rights of man was to flourish, it must be rooted in democracy. The most basic right of all was the right to choose your own leaders," says President Lyndon B. Johnson in a special message to Congress regarding the American promise in 1965. Democracy is the cornerstone of America and is what allows the ideas of possibility and hope to run through the country.

*Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

3



**1. Jaley Hunt**  
 First Place  
 12th Grade Art  
 Edmond Santa Fe High School,  
 Edmond

**2. Mary Elizabeth Kauk**  
 First Place  
 12th Grade Writing  
 Corn Bible Academy,  
 Clinton

**3. Jessie Wong**  
 First Place  
 11th Grade Writing  
 Norman High School,  
 Norman

**4. Lily Ramon**  
 First Place  
 11th Grade Art  
 High Plains Technology Center,  
 Woodward



5

### KATE BERNARD'S JOURNAL

Dear Journal,  
It feels so silly to write like this; like I am a young schoolgirl. But somehow, it seems important to document my journey ... No, my new career. I was born in Nebraska in 1875 to my parents: John and Rachel. My poor mother died soon after, and my father abandoned me to the care of my welcoming relatives. *Read the full entry at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

6



To see the complete list of winning entries, please visit [www.okbar.org/lawday](http://www.okbar.org/lawday).

**5. Ciaran Schiavone**  
First Place  
10th Grade Art  
Edison Preparatory School,  
Tulsa

**6. Julie Martin**  
First Place  
10th Grade Writing  
Cache High School,  
Cache

**7. Joseph Madden**  
First Place  
Ninth Grade Art  
Mingo Valley Christian School,  
Tulsa

**8. Ledesli Armendariz**  
First Place  
Ninth Grade Writing  
Pauls Valley Junior High School,  
Pauls Valley



7

### OUR RESPONSIBILITY

8

Civic participation is the way we citizens of the United States build a stronger sense of community. Civic participation by definition is the involvement of individual constituents or communities in local, state, and national government. The United States is defined as a democracy which relies on our responsibility to engage and be the change we want to see in our government. Influencing others to be active in participating can lead to our voices being heard and represented. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



# IMMIGRATION LAW SECTION UPCOMING EVENTS

**May 28 | Noon:**    **Ethics CLE on Artificial Intelligence**  
*By Jim Calloway*

**June 6 | 5-7p.m.:**    **Sponsored Happy Hour**  
*Oklahoma City and Tulsa*

**July:**    **General CLE During the OBA  
Annual Meeting**  
*(date and time TBD)*

*There is no cost to attend any of the events.*

*All meetings are hybrid: Oklahoma Bar Center and Zoom.*

*Lunch will be provided for all noon meetings at the Oklahoma Bar Center.*

**For more information and to RSVP, contact the OBA Immigration Law Section  
Chair Elissa Stiles at 918-419-0166 or [estiles@rivasassociates.com](mailto:estiles@rivasassociates.com).**





# **ONE ASSOCIATION MANY OPPORTUNITIES**

**JOIN AN OBA COMMITTEE TODAY!**

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

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



# FREE CONFIDENTIAL ASSISTANCE



"My fear of failing, malpractice and bar complaints was unbearable, and all I could do was keep opening new cases in order to put food on the table and pay all the debt I had just incurred. The pressure was intense, and I felt like I was suffocating, gasping to stay alive just a few more moments."

- Scott B. Goode, OBA Member

Get help addressing stress, depression, anxiety, substance abuse, relationships, burnout, health and other personal issues through counseling, monthly support groups and mentoring or peer support.

**800-364-7886 | [WWW.OKBAR.ORG/LHL](http://WWW.OKBAR.ORG/LHL)**



Oklahoma Bar Association  
Lawyers Helping Lawyers  
Assistance Program

## 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).



# Celebrating the Rule of Law

By Janet Johnson

**A MAJOR BRAGGING RIGHT** for Oklahomans is that our state is the birthplace of Law Day. Oklahoma lawyer Hicks Epton, who later served as OBA and OBF president, conceived this idea in 1951. Since its inception, Law Day has become a way to celebrate and honor the rule of law. In 1958, President Eisenhower established Law Day as a national day in the United States, and it is celebrated annually on May 1 to honor the law and its basis for our system of government. This month, many Oklahoma lawyers, county bar associations and the OBA will be promoting a deeper understanding of the legal system and its principles to the public.

Law Day serves as an opportunity for Oklahomans to reflect on the role of law in their lives and to engage in discussions about the legal system's significance in preserving democracy, protecting individual rights and ensuring justice for all citizens. It also provides a platform for legal professionals to interact with the public and to promote civic education and engagement.

Each year, I can hardly contain my excitement about Law Day. It's such an amazing opportunity to celebrate the rule of law, revisit civics and engage with the public. Highlighting the relevance of Law Day is always an important mission for the OBA. It is a key opportunity to not only celebrate



the legal profession but also promote public awareness of the rule of law. Plus, it gives lawyers a platform to showcase their expertise and commitment to upholding justice in Oklahoma. Through our annual Ask A Lawyer public service event, lawyers assist the public with a variety of legal issues. Every May 1, all Oklahomans are encouraged to call a hotline or send an email with their legal questions. Volunteer lawyers staff the hotline from 9 a.m. to 9 p.m. to assist callers with any issues they may be encountering or direct them to appropriate resources to assist them further. Every year, thousands are able to take advantage of this service, which is now in its 48th year.

I encourage you all to look at the many opportunities for participation in Law Day. By promoting public understanding, Law Day provides an opportunity for lawyers to engage with the public and promote a deeper understanding of the legal system. This helps to demystify legal concepts, address misconceptions and foster

informed citizenship. It can often be overlooked how crucial a role lawyers play in advancing civic education and promoting civic engagement. Participating in Law Day events allows lawyers to educate students, community members and fellow professionals about their rights and responsibilities.

Overall, Law Day is an opportunity to celebrate legal heritage and achievements. By participating in Law Day activities, lawyers can honor the legacy of those who have worked tirelessly to advance justice, protect individual rights and uphold the rule of law. Contributing to the public good and promoting legal literacy will undoubtedly foster a greater appreciation for the legal system. Involved lawyers can demonstrate their dedication to upholding the rule of law and advancing justice for all by actively engaging in Law Day and helping us all build a more informed, inclusive and equitable society. I hope you'll join us in this endeavor this year and every year!

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



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



(continued from page 4)

that the costs of running the OBA will continue to rise over time. One of the things that has put the OBA in a position of strength over the past few years is its strategic reserve. That reserve should be protected and not become a source of funding for losses incurred due to the failure of the OBA to reasonably and appropriately raise the dues level.

I assure you that, with this increase, the OBA will continue to improve its operations and services – not simply to maintain the status quo. Firstly, an organization is only as strong as the people who work for it. This increase allows the OBA to keep its best personnel and invest in future talent. Secondly, the OBA has been focusing more and more on improving its technology over the past couple of years. You may not see everything that is being done, but a lot of work is taking place. Moreover, we have reorganized the OBA Technology Committee and appointed Collin Walke as chair to review what the OBA does today and recommend a future direction for the organization. Thank you, Mr. Walke, for your service.

Hopefully, the discussion above makes clear that we cannot do nothing. To add to that point, this

year, the OBA is projected to draw down its strategic reserve by \$1.26 million. To be clear, OBA operations run on a close to breakeven basis. Rather than ongoing operations, it is building costs and maintenance that create the bulk of the loss in 2024. You should know future projected building costs were included in the cash flow projections that were considered when the board evaluated the dues increase to specifically address this issue.

There is another factor to consider: “How does the OBA compare to other bar associations around the country?” Not all bar associations are integrated bars that perform all the functions that the OBA does. Kansas and Colorado, for example, are voluntary bars that are not required to maintain an enforcement arm like the OBA Office of the General Counsel. Others, like Texas, have vastly different membership makeups (*e.g.*, more than 100,000 members compared to the OBA’s 18,000) and can bring in considerably larger sums of money to run their operations.

The best comparisons, I believe, are South Carolina, Alabama, Oregon, Kentucky, Wisconsin, Arizona and Louisiana. Their average dues are \$398, so the board’s

recommended increase would bring us in line with similarly situated states. With that said, I would not be surprised if some of those states on the lower end raise dues in the next few years, illustrating that the OBA is the bargain it has been over the past decade-plus.

To conclude, I remind all Oklahoma attorneys that practicing law in this state is a privilege and not a right. There are many obligations that come with that privilege, which are regulated, supported and enhanced by the OBA. I think it is more than fair for Oklahoma attorneys to pay for that privilege at a dues level that appropriately supports the OBA’s ongoing operations and appropriate building maintenance and upkeep. Other models would require either increased court fees (burdening some of those Oklahomans less able to pay) and/or funds from Oklahoma’s general revenues (taking away from law enforcement and education). I firmly believe that Oklahoma’s model is the best and most equitable one available.

I humbly ask for your support of the proposed OBA dues increase.

# Navigating the Latest Microsoft 365 Innovations

By Julie Bays

**“IT’S TIME TO UPGRADE.”** Upgrades are great when related to hotel rooms, home improvements and airline seating. Technology upgrades (and updates) used to be a slight annoyance that frequently added new useful features and tools, but upgrading a technology tool today is often approached with trepidation. What feature that I use daily will either disappear or be moved somewhere difficult to locate? What third-party software add-on or peripheral will cease to work or require an upgrade of its own once the upgrade is finished?

For lawyers with busy workloads, another challenge with upgrades is finding the time to learn about the usefulness of any upgraded features.

Microsoft certainly keeps upgrading and changing things. Many lawyers use the Microsoft 365 suite every day, so it is useful to keep up with the many updates and changes in features that have occurred in the past year or so. Microsoft is now promoting their artificial intelligence tool, Copilot, which can be added as part of the Microsoft 365 for business suite to their customers, so let’s begin with that.

## WHAT IS COPILOT?

Microsoft 365 Copilot and Bing Copilot Chat are distinct

AI-powered tools. They operate in different contexts and serve different purposes. Unfortunately, they are both named Copilot, so it can be confusing.

### *Microsoft 365 Copilot*

Microsoft 365 Copilot is an AI assistant integrated within the Microsoft 365 suite, including applications like Word, Excel, PowerPoint, Outlook and Teams. It offers personalized assistance by accessing and analyzing data within the Microsoft 365 ecosystem, facilitating tasks like generating documents, analyzing data, creating presentations, managing emails and enhancing collaboration.

More importantly, Microsoft 365 Copilot works with your data and does not access the web or use any information outside of your applications. It incorporates into your applications.

### *Copilot Chat*

The new Bing, which is now also called Copilot, is a chatbot incorporated into the Bing search engine. You must be logged in to a personal Microsoft account. The chatbot is also available in the Edge browser and the Edge mobile browser. The new Copilot screen invites you to “Ask me anything,” and you can select a conversation style from

the options: more creative, more balanced or more precise. You can run a regular web search or toggle Copilot Chat. Copilot Chat works best with Microsoft Edge or the Bing mobile app.

The business version, often referred to as Copilot Chat Enterprise, is designed with commercial data protection in mind. This version is tailored for business users and operates under stricter privacy and security protocols to ensure that the data used within a corporate environment remains confidential and is not used for training AI models.

In contrast, the individual version of Copilot Chat may use the data from interactions to improve and train the AI models. In the consumer version, data from the chats can be utilized to enhance the AI’s understanding and responses, subject to Microsoft’s privacy policies and guidelines. This distinction is crucial for law firms and individuals to understand, especially regarding the handling and privacy of their data during interactions with AI tools like Bing Chat Copilot.

## USING MICROSOFT 365 COPILOT

### *Word*

In Microsoft Word, Copilot enhances the writing process by



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assisting in generating first drafts and editing content, streamlining the creation of documents. When starting a fresh document, the “Draft with Copilot” feature appears where your prompt is. You can provide a simple sentence or a more intricate request, such as, “Write a blog post about forming an LLC” or “Create a paragraph on time management.” Users can reference up to three existing files, grounding the content Copilot generates. You can choose to keep it, discard it or ask Copilot to regenerate a different version. To fine-tune Copilot’s response, a user can provide specific instructions like “Make this more concise.”

Copilot can also work with material that you already have. It can edit or improve your existing content. If you want to rewrite text or turn it into a table that you can

change, you just select the part you want to rewrite, and it will do it for you.

#### *PowerPoint*

Copilot in PowerPoint can help create professional presentations. Users can generate an initial draft slideshow by selecting the Copilot button and providing a prompt, such as “Create a presentation about project milestones.” Copilot will draft the initial content, which users can then edit and modify as needed.

In addition to drafting new presentations, Copilot can summarize existing ones by condensing lengthy content to highlight key sections. This can make it easier to review or share presentations with extensive material.

Copilot also facilitates presentation organization by rearranging slides, adding section

separators and improving overall flow and clarity. It provides a feature to convert Word documents into PowerPoint presentations – handling slide generation, layout application, speaker notes creation and theme selection.

#### *Outlook*

One of the key benefits of using Copilot in the new Outlook is its ability to summarize email threads and draft responses. It analyzes the contents of incoming emails, identifies key information and presents it to you in a concise format, making it easier for you to understand the conversation and respond effectively. This feature is useful when dealing with lengthy email threads or when you need to quickly catch up on a discussion.

Additionally, Copilot can assist a lawyer in drafting email





## ARTIFICIAL INTELLIGENCE SHAPING THE FUTURE OF LAW PRACTICE



JULY 12 | EMBASSY SUITES | NORMAN

If you're interested in learning more about Microsoft Copilot and how to integrate it into your practice, Ben Schorr, senior content program manager at Microsoft, will be speaking Friday, July 12, on navigating Microsoft Copilot. His session will be held during the Artificial Intelligence Conference in conjunction with the OBA Annual Meeting at the Embassy Suites in Norman, July 9-12. Mr. Schorr is the author of several books and articles on technology, including *Microsoft 365 for Lawyers* and *The Lawyer's Guide to Microsoft Word*.

responses. It provides suggestions based on the context and content of the email you are replying to, helping you compose more efficient and effective messages.

### *Teams*

Microsoft Teams Copilot has all the same features as above, and Microsoft keeps adding more to Teams. In Teams, you can get suggestions for prompts to improve your outcomes.

### **MICROSOFT 365 TOOLS**

Microsoft 365 subscribers have had to learn that there are two ways to access your tools. We have Word, Outlook and the rest of the Office suite installed on our computer. But we can also log in to the web version of Microsoft 365 and access many other tools provided by Microsoft. If you have used the online version of Outlook, you may be comfortable with the new Outlook.

### *The New Outlook*

The updated email and calendar app has a simpler interface like the web version of Microsoft Outlook.

The once complex ribbon has been streamlined to reduce clutter, allowing users to select from different density options to adjust the layout to their liking. Settings management has been made more efficient, with a prominently placed "Settings" cog in the top right corner, making account, email and calendar configurations more intuitive. The new Outlook also offers personalization options, accommodating individual preferences with layouts ranging from "roomy" to "compact."

However, there are drawbacks. The new Outlook, despite its simplicity, lacks support for some features vital to legal workflows, such as tasks, notes and the full functionality of classic contacts. Additionally, there may be compatibility issues with specific add-ins and integrations.

For lawyers, a significant limitation of the new Outlook is its compatibility with practice management software (PMS) add-ins. These add-ins, such as the Clio add-in, are crucial for many law firms to manage their cases, clients and billing effectively. Most of these add-ins

do not work with the new Outlook, which can be a major inconvenience. Unfortunately, Microsoft insists that this new Outlook will replace the classic Outlook by the end of the year. Hopefully, most of the PMS companies will replace their old integrations and add-ins with new ones to be reinstalled into the new Outlook.

### *Classic Microsoft Outlook Tools*

These tools are available to use with classic Outlook.

**Meeting Insights.** If you haven't noticed a blue button in the top right corner of your calendar entry called "meeting insights," then you are missing out on a valuable tool. The meeting insights feature is offered within the Microsoft 365 calendar.

Meeting insights helps users get ready for meetings by finding related content from their mailboxes, OneDrive for Business and SharePoint sites. It shows all the documents and emails that might matter for the meeting. It also recommends materials that users may need to look at or review so they can be well prepared for the meeting.

**Microsoft Bookings.** This scheduling app is part of your Outlook calendar and might be something you want to consider. This app has improved over the years. You access it through the online version of Outlook Calendar. This application enables lawyers to efficiently manage appointments, meetings and consultations with clients or colleagues.

Bookings lets you create an online booking page you can share with clients so they can book appointments with attorneys or staff according to their availability. You can put this booking page link in emails, newsletters or the law firm's website for easy access.

When someone makes an appointment through bookings, it synchronizes immediately with the Outlook calendar of the lawyer or staff member they booked with. This integration stops them

from being booked twice at the same time and makes sure their availability is always up to date. It sends automated email notifications for appointment confirmations and reminders to both clients and attorneys or staff members.

Law firms can configure different appointment types, such as initial consultations, follow-up meetings or specialized legal services, each with customizable durations. Specific lawyers or staff members can be assigned to each type of appointment.

**Classic Outlook Summarize.** Because I have installed Microsoft CoPilot, classic Outlook displays the "summarize" tool. This is a real time-saver. Not only will it summarize a long email, but if there are several emails in the conversation, it will summarize the entire discussion with links to each of the individual emails in the summary.

## CONCLUSION

These newer features are only a small fraction of Microsoft's continuous updates. As many lawyers rely heavily on these tools for their daily workflows, staying informed about the latest changes can be a challenge but is crucial for maximizing efficiency and making the most of the available resources. While learning recent updates may initially interrupt your usual work routines, using the improved features can help you achieve more efficiency and productivity in your legal practice.

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

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## Meeting Summaries

*The Oklahoma Bar Association Board of Governors met Feb. 23.*

### REPORT OF THE PRESIDENT

President Pringle reported he attended the joint reception with the Board of Governors and the Oklahoma Bar Foundation, the annual has-beens dinner and the swearing-in ceremony for officers and new board members. He worked on appointments and Annual Meeting programming, filmed a Law Day video and revised the Technology Committee Aims and Objectives with Executive Director Johnson and Chair Collin Walke. He reviewed new renderings for the Oklahoma Bar Center entrance, authored an *Oklahoma Bar Journal* article, attended the National Conference of Bar Presidents Midyear Meeting and served as an Oklahoma delegate in the ABA House of Delegates in Louisville, Kentucky. He attended a dinner for the Oklahoma delegates to the ABA House of Delegates as well as a dinner with the officers of the Oklahoma, Arkansas and Texas bar associations. He also attended the Legislative Monitoring Committee meeting.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Williams reported he attended the Board of Governors has-beens dinner, the swearing-in ceremony for officers and new board members and President Pringle's reception. He

virtually attended the ABA training session for new delegates and participated in an Inns of Court Pupillage Group presentation preparation session. He reviewed multiple needs requests made to the Oklahoma Bar Foundation and voted on Board of Trustees resolutions. He attended the January meeting of the OBF Board of Trustees, the Southern Conference of Bar Presidents meeting and the National Conference of Bar Presidents Midyear Meeting in Louisville, Kentucky. He attended multiple presentations following the National Conference of Bar Presidents Midyear Meeting, served as an Oklahoma delegate at the ABA House of Delegates and attended a dinner for the Oklahoma delegates to the ABA House of Delegates. He attended a dinner with the officers of the Oklahoma, Arkansas and Texas bar associations, virtually attended the February meeting of the Professionalism Committee and worked on appointments for 2024 and officers for 2025. He also attended the Tulsa County Bar Association Judicial Dinner, the joint reception with the Board of Governors and the Oklahoma Bar Foundation, two Legislative Monitoring Committee meetings and an event hosted by the Tulsa County Bar Association.

### REPORT OF THE VICE PRESIDENT

Vice President Peckio reported she attended the Board of Governors has-beens dinner and the swearing-in ceremony for officers and new board members. She also attended the joint reception with the Board of Governors and the Oklahoma Bar Foundation, as well as a welcome reception for Judge Sara E. Hill, the monthly Tulsa Lawyers Helping Lawyers Assistance Program discussion group and the Family Law Section happy hour with Tulsa County's new family law judges at the Tulsa County Bar Association. She taped the newest "Between Two Weeds" CLE segment for the OBA CLE Department and attended and spoke at the Legislative Kickoff for the Legislative Monitoring Committee.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she worked on Annual Meeting programming with the Oklahoma Supreme Court and within the OBA and met with architects to work on renderings for the new Oklahoma Bar Center entrance, as well as with Justice Darby and Past President Hermanson and his family for feedback. She authored an article for the *Oklahoma Bar Journal*, met with Jackson Mechanical on current preventative maintenance for the Oklahoma Bar Center's chiller, boiler and HVAC and held a directors meeting on membership



email processes. She met with members about the criminal law Mock Trial program, attended the National Conference of Bar Presidents Midyear Meeting in Louisville, Kentucky, and attended the Oklahoma delegates dinner. She attended a breakfast with OU College of Law faculty to discuss engagement opportunities, a meeting with Lawyers Helping Lawyers Assistance Program Committee Chair Scott Goode and A Chance to Change to discuss phone answering procedures and Mayor David Holt's investiture as dean of the OCU School of Law. She attended CLE programming on 60 O.S. Sec. 121 presented by the Attorney General's Office, the YLD board meeting and bar exam survival kit assembly, the Bench and Bar Committee meeting and the joint reception with the Board of Governors and the Oklahoma Bar Foundation.

### REPORT OF THE IMMEDIATE PAST PRESIDENT

Immediate Past President Hermanson reported he attended the Board of Governors has-beens dinner, the swearing-in ceremony for officers and new board members and a joint dinner of the officers of the Oklahoma, Arkansas and Texas bar associations. He attended the National Conference of Bar Presidents and the Southern Conference of Bar Presidents Midyear Meeting in Louisville, Kentucky. He appeared before the Oklahoma

House of Representatives Budget Subcommittee at the Oklahoma state Capitol and attended the OBA delegates dinner to the ABA House of Delegates and the ABA House of Delegates meeting as an OBA delegate. He also virtually attended the special committee meeting on the remodel of the Oklahoma Bar Center entrance and the Legislative Monitoring Committee meeting. He attended board meetings of the District Attorneys Council and the Oklahoma District Attorneys Association. Additionally, he attended the Law Day Committee meeting and the joint reception with the Board of Governors and the Oklahoma Bar Foundation.

### BOARD MEMBER REPORTS

**Governor Ailles Bahm** reported she attended the Board of Governors has-beens dinner, two Legislative Monitoring Committee meetings, the Lawyers Helping Lawyers Assistance Program Committee meeting and the Bench and Bar Committee meeting. **Governor Barbush** reported he attended the Choctaw Nation Bar Association meeting and the joint reception with the Board of Governors and the Oklahoma Bar Foundation and met with Executive Director Johnson. **Governor Bracken** reported he attended the Board of Governors has-beens dinner, the swearing-in ceremony for officers and new board members, the joint ceremony with the Board of Governors and

the Oklahoma Bar Foundation and the foundation's needs assessment meeting. He also discussed the Oklahoma Lawyers for America's Heroes Program with program coordinator Craig Combs and MAP Director Jim Calloway. **Governor Conner** reported he attended the Garfield County Bar Association meeting. **Governor Dow** reported she attended the Family Law Section meeting, the Mary Abbott Children's House Board of Directors meeting and the joint reception with the Board of Governors and the Oklahoma Bar Foundation. **Governor Hixon** reported he attended the Board of Governors swearing-in ceremony and reception, the Tulsa County Bar Association Board of Directors February meeting, the judicial dinner fundraiser for the Tulsa County District Court and the Morton Comprehensive Health Services January Board of Directors meeting. He participated in the annual retreat and Board of Directors meeting for the Will Rogers Memorial Foundation. **Governor Knott** reported she presented a CLE program at the Canadian County Bar Association's January meeting, as well as at the OCU School of Law Alumni Association. She attended the Canadian County Bar Association's February meeting. **Governor Oldfield** reported he reached out to Professionalism Committee Chair Richard D. White Jr. and Legal Internship Committee Chair Trent Hall Baggett to introduce himself as the Board of

Governors liaison to the committees. **Governor Rogers** reported he attended the Board of Governors has-beens dinner, the Board of Governors swearing-in ceremony for officers and new board members and the TU College of Law Alumni Association board meeting for past presidents and reception for Judge Sara E. Hill. He also attended the Tulsa County Bar Foundation Judicial Dinner fundraiser for the Tulsa County District Court and the OU College of Law Order of the Owl induction and ceremony. **Governor Thurman** reported he met with the Civil Procedure and Evidence Code Committee and judged the High School Mock Trial competition. **Governor Trevillion** reported he attended the Board of Governors has-beens dinner and the swearing-in ceremony for officers and new board members. He initiated contact with the Group Insurance Committee chair and attended the Federal Bar Association White Collar Committee meeting and a voting rights CLE sponsored by the U.S. District Court for the Western District of Oklahoma.

### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Talbert reported she attended the Access to Justice Committee meeting, in which the date was set in the fall for the annual summit, and the Solo and Small Firm Conference Planning Committee meeting. She also attended the YLD board meeting.

### REPORT OF THE GENERAL COUNSEL

A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

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After an in-depth analysis, the program coordinator recommends changes to substantially restructure the program, including leveraging existing public resources, such as Oklahoma Find A Lawyer, as opposed to offering no-cost direct legal representation.

### BOARD LIAISON REPORTS

President-Elect Williams reported the **Legislative Monitoring Committee** is preparing for the annual OBA Day at the Capitol. Past President Hermanson reported the **Solo and Small Firm Conference Planning Committee** met in February and is discussing programming for an educational track aimed at solo and small firm practitioners to be held in conjunction with the Annual Meeting in July. Governor Barbush reported the **Cannabis Law Committee** and the **Lawyers Helping Lawyers Assistance Program Committee** are both meeting regularly. Governor Bracken said that John Cannon was recently appointed chair of the **Military Assistance Committee**. Governor Conner reported the **Awards Committee** will meet in April to review and discuss this year's OBA Award nominations and make its recommendations for the 2024 winners. Governor Dow reported Melissa Brooks has been appointed co-chair of the **Diversity Committee**. Governor Hixon reported the **Law Day Committee** has completed judging the Law Day student art contest entries, and its work judging essays continues. He

said a record-breaking number of contest entries were received this year. Governor Thurman reported the **Civil Procedure and Evidence Code Committee** met recently, and Spencer Habluetzel is its new chair. Governor Knott said the **Law Schools Committee** is continuing to coordinate site visits at law schools. Governor Ailles Bahm reported the **Lawyers Helping Lawyers Assistance Program Committee** is developing its relationship with the LHL Foundation to support fundraising efforts. She also said the **Legislative Monitoring Committee** is looking for speakers for its upcoming OBA Day at the Capitol event. Governor Trevillion reported the **Group Insurance Committee** is discussing how it will navigate the challenge of some providers dropping coverage for associations. Governor Talbert reported the **Access to Justice Committee** met and is excited about planning its fall summit. She also said the **Solo and Small Firm Conference Planning Committee** is looking at how the Young Lawyers Division could develop Annual Meeting programming in conjunction with LHL efforts aimed at young lawyers.

## OKLAHOMA LAWYERS FOR AMERICA'S HEROES PROGRAM STATUS UPDATE AND REQUEST FOR CHANGES

Discussion took place related to challenges to the existing program and outlined various risks to the association's reputation through continuing with it in its current form. After an in-depth analysis, the program coordinator recommends changes to substantially restructure the program, including leveraging existing public resources, such as Oklahoma Find A Lawyer, as opposed to offering no-cost direct legal representation. The board approved a motion to accept the findings and recommendations.

## PROPOSED EDITS TO THE BAR ASSOCIATION TECHNOLOGY COMMITTEE AIMS AND OBJECTIVES

The committee proposed to revamp and reinvigorate the association's technology availability and presented proposed edits to its statement of Aims and Objectives. The board passed a motion to approve the revised Aims and Objectives as amended.

## RESOLUTION SUMMARY FROM THE ABA MIDYEAR MEETING

OBA State Delegate William H. Hoch presented resolutions and discussed actions that took place during the recent ABA Midyear meeting. The Oklahoma delegation is exploring the possibility of hosting the meeting in Oklahoma City, and he discussed what actions the Board of Governors might take to support that possibility. He also explained how hosting the meeting in Oklahoma would be beneficial for both the OBA and the ABA.

## 2024 PRESIDENTIAL APPOINTMENTS

The board passed motions to approve the following appointments.

**Committee on Judicial Elections:** President Pringle reappoints Bobby "Bob" G. Burke of Oklahoma City to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2031. He also appoints Lay Member Venita Hoover of Jones to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2031.

**Opioid Overdose Fatality Review Board:** President Pringle proposes to submit the three names of Carrie D. Pfrehm, Ardmore; Elizabeth L. Dalton, Oklahoma City; and Cori Hook Loomis, Oklahoma City, to the Oklahoma attorney general as suggestions for appointment to a two-year term expiring Nov. 1, 2025.

**Forensic Review Board:** President Pringle proposes to submit the three names of James "Patrick" Quillian, Oklahoma City; Rhiannon K. Thoreson, Broken Arrow; and Leslie Hellman, Oklahoma City, to the Oklahoma governor as suggestions for appointment to a five-year term expiring Dec. 31, 2029.

## PENDING LEGISLATION

The board approved a motion for the OBA to recommend continuing to support the current method of judicial selection in Oklahoma using the Judicial Nominating Commission and oppose any legislation that would alter that method. The board also passed a motion that the OBA recommend opposing any legislation that involves placing age limits on members of the state judiciary. President Pringle and Governor Hixon abstained from the vote. The board also passed a motion that the OBA recommend opposing any legislation that involves placing term limits on members of the state

judiciary. President Pringle and Governor Hixon abstained.

## ADDITIONAL 2024 PRESIDENTIAL APPOINTMENTS

**Standing Committee – Bar Association Technology Committee:** President Pringle appoints Chairperson Collin Walke, Oklahoma City, to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2024.

**Standing Committee – Military Assistance:** President Pringle appoints Chairperson John Cannon, Edmond, to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2024.

**Standing Committee – Diversity:** President Pringle appoints Co-Chairperson Melissa Ann Brooks, Oklahoma City, to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2024.

**Legal Ethics Advisory Panel (LEAP) – Tulsa Panel:** President Pringle reappoints Brita Haugland-Cantrell, Tulsa, to a term beginning Jan. 1, 2024, and expiring Dec. 31, 2026.

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*The Oklahoma Bar Association Board of Governors met March 25.*

## REPORT OF THE PRESIDENT

President Pringle reported he wrote his article for the *Oklahoma Bar Journal*, signed certificates for OBA members reaching 50, 60 and 70 years of membership, helped plan the 2024 Annual Meeting and worked on the proposed dues increase with Administration Director Brumit. He also fielded questions and participated in planning the association's response to pending legislation that impacts the administration of justice. He met with the OBA's strategic planning facilitator, attended the Legislative



Monitoring Committee meeting, filmed an episode of *The Verdict* with Kent Meyers and Mick Cornett, met with the Oklahoma Access to Justice Foundation Executive Director Katie Dilks regarding OBA form drafting projects and met with the co-chair of the Animal Law Section.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Williams reported he participated in the final practice session for the Inns of Court Pupillage Group presentation, attended an Oklahoma Bar Foundation Board of Trustees meeting, met with President Pringle to work on the OBA strategic planning process and represented the OBA at the Oklahoma High School Mock Trial finals at the OU College of Law. He virtually participated in the ABA Bar Leadership Institute preparatory session and attended the three-day event in Chicago, testified in an OBA Professional Responsibility Tribunal proceeding and virtually participated in the OBA strategic planning process with President Pringle, Executive Director Johnson and facilitator Marcy Cottle. He also virtually participated in the Legislative Monitoring Committee meeting, met with Executive Director Johnson to work on remote Board of Governors meetings for 2025 and participated in the Tulsa County Bar Foundation Charity Golf Tournament and OBA Day at the Capitol.

### REPORT OF THE VICE PRESIDENT

Vice President Peckio reported she attended a meeting of the Lawyers Helping Lawyers Assistance Program Committee and the Tulsa County Bar Foundation Charity Golf Tournament.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she handled numerous legislative matters as well as building and facilities matters, continued 2024 and 2025 Annual Meeting planning meetings, attended the OU College of Law Professionalism Night, discussed CLE opportunities with Chief Justice Kane and Justice Kuehn and met with President Pringle and Access to Justice Foundation Executive Director Dilks on numerous public forms projects. She attended a Licensed Legal Intern hearing and meeting, a strategic planning meeting with President Pringle, President-Elect Williams and the OBA's strategic planning facilitator Marcy Cottle to plan out the year, the Legislative Monitoring Committee meeting and the ABA Bar Leadership Institute conference in Chicago. She worked on an *Oklahoma Bar Journal* article, discussed CLE programs with President Pringle and Animal Law Section Co-Chair Charis Ward, met with the Oklahoma High School Mock Trial Coordinator Judy Spencer and attended the Appellate Practice Section CLE on the Judicial Nominating Commission.

### REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hermanson reported he attended the Board of Governors orientation session, gave the welcoming speech at the Victim Compensation Training/Tribal Round Table and had discussions with President Pringle on various OBA issues. He attended the District Attorneys Council Board and Technology Committee meetings, the Oklahoma District Attorneys Association board meeting and the Tonkawa and Blackwell chambers of commerce

legislative breakfasts. He also participated in OBA litigation issues and spoke at several events about the importance of the Judicial Nominating Commission.

### BOARD MEMBER REPORTS

**Governor Ailles Bahm** reported she attended the Legislative Monitoring Committee meeting, where they finalized plans for OBA Day at the Capitol and the Legislative Debrief, which will take place at the Annual Meeting. She attended OBA Day at the Capitol and the Lawyers Helping Lawyers Assistance Program Committee meeting. **Governor Barbush** reported he agreed to volunteer at an expungement clinic hosted by Legal Aid Services of Oklahoma and other nonprofits in Durant to assist people with their employment and housing issues, with the first hour dedicated to veterans. He met with the Bryan County Bar Association president, began working on the Southeastern Oklahoma Summit, made an appointment with the House of Representatives for a meeting during OBA Day at the Capitol and attended OBA Day at the Capitol. **Governor Bracken** reported he attended the Legislative Monitoring Committee meeting, the Oklahoma Bar Foundation Board of Trustees meeting and the Oklahoma County Bar Association Board of Directors meeting. **Governor Conner** reported he attended the Garfield County Bar Association meeting. **Governor Dow** reported she attended the Mary Abbott Children's House Board of Directors meeting and the Family Law Section meeting. **Governor Hixon** reported he attended the Board of Governors orientation session and participated in the Law Day Committee meetings and the Tulsa County Bar Association's Executive Committee and Board of Directors meetings. **Governor**

**Knott** reported she attended the Canadian County Bar Association meeting. **Governor Locke** reported he attended the Membership Engagement Committee meeting and the Muskogee County Bar Association meeting. **Governor Oldfield** reported he had discussions with the Legal Internship Committee chair and received and reviewed questions from the Legal Internship Committee. **Governor Thurman** reported he attended a meeting with Pontotoc County Bar Association officers and attended the Drug Court participant graduation. He also attended the Pontotoc County Bar Association meeting and social hour and the Civil Procedure and Evidence Code Committee meeting.

### REPORT OF THE GENERAL COUNSEL

A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

### BOARD LIAISON REPORTS

Governor Oldfield reported the **Legal Internship Committee** is discussing a possible rule change. Governor Barbush reported the **Cannabis Law Committee** and the **Lawyers Helping Lawyers Assistance Program Committee** are both regularly meeting. Governor Ailles Bahm also said the **Lawyers Helping Lawyers Assistance Program Committee** is continuing its discussion related to partnership with the LHL Foundation, and a fundraiser is being planned for this fall. Governor Conner reported the **Awards Committee** is meeting April 5 to determine annual OBA Awards recommendations. Governor Hixon reported the **Law Day Committee** is gearing up for its annual Law Day activities, including the April 4 ceremony at the Supreme Court to recognize

the first-place art and writing contest winners and the annual Ask A Lawyer event on May 1. He noted the committee is forming new partnerships with the **Access to Justice Committee** and the OBA Leadership Academy to handle calls and emails to the Ask A Lawyer public hotline. Governor Locke reported the **Membership Engagement/Member Services Committee** recently met and is working to connect with the TU College of Law to build relationships with law students interested in practicing as OBA members. Governor Thurman reported the **Civil Procedure and Evidence Code Committee** is working on topics related to e-filing.

### FINANCIAL PROJECTIONS FOR DUES INCREASE

The board reviewed assumed future anticipated operational expenses and necessary capital expenditures and the impact on revenue. They also looked at dues costs for other comparably sized bar associations and discussed various options. The board approved a motion to present and recommend a dues increase of \$125 to the House of Delegates. A notice of the proposal will be published in the *Oklahoma Bar Journal*, and a public hearing will be scheduled.

### CREATING A SUBCOMMITTEE ON FORMS FOR THE ACCESS TO JUSTICE COMMITTEE

The board discussed recently passed legislation directing the OBA to create certain publicly available legal forms, the creation of which requires a range of subject matter expertise. They approved a motion to create a subcommittee of the Access to Justice Committee to provide a single point of contact to efficiently oversee this work in progress.

### 2024 PRESIDENTIAL APPOINTMENTS

The board passed motions to approve the following appointments.

**Committee on Judicial Elections:** President Pringle appoints William Hoch, Oklahoma City, to a term that began Jan. 1, 2024, and expires Dec. 31, 2031.

**Domestic Violence Review Board:** President Pringle proposes to submit the three names of Julie L. Goree, Tulsa; Laura McConnell-Corbyn, Oklahoma City; and Allyson Dow, Oklahoma City, to the Oklahoma attorney general as suggestions for appointment to a term that runs July 2024 to June 2026.

**Professional Responsibility Tribunal (PRT):** President Pringle reappoints Greg Mashburn, Norman, and Lane R. Neal, Oklahoma City, to terms beginning July 1, 2024, and expiring June 30, 2024.

### REPORT ON LEGISLATIVE SESSION

The board received a report on the status of current legislative deadlines. The presentation included an update on the status of SJR 34, legislation that pertains to dismantling the Judicial Nominating Commission. A suggestion was put forward that OBA members should be encouraged at this time to reach out to legislators at the grassroots level to express their concerns about changing the method of judicial selection in Oklahoma. The board passed a motion to approve the creation, publication and distribution of materials related to the Board of Governors' opposition to SJR 34.

### NEXT BOARD MEETING

The Board of Governors met in April, 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 virtually on Friday, May 24.

# 2024 OBF President's Message

By Allen Hutson

**I WAS ASKED TO JOIN THE** Oklahoma Bar Foundation by a partner in my firm who was vacating her position as a Trustee. Admittedly, I only agreed to please a partner and quietly wondered how I would juggle my billable hour requirement and yet another outside obligation. On top of that, I was agreeing to join an organization I had never heard of and certainly had no concept of its purpose. Despite my self-loathing, seven years later, I can tell you it has been one of the more satisfying adventures I have taken both professionally and personally – mostly personally.

So what have I learned to change my perception of the OBF? I have learned it provides hope and change to Oklahomans in need, from Altus to Tulsa, Guymon to Hugo and everywhere in between. I have seen hope on the faces of

grantees seeking grants to provide drug treatment services, shelter for victims of domestic violence and child abuse as well as legal services to immigrants seeking asylum from war-torn countries. I have seen change in the first-hand stories of Oklahomans who survived sex trafficking, escaped abusive relationships or kept their home and family together through services provided by nonprofit organizations the OBF proudly supports. The OBF provides hope and change daily by staying the course of its mission to enrich lives, eliminate obstacles and ensure justice by partnering with our community through law-related grants and philanthropy.

My goal for 2024 is to continue to shed light on the mission and good deeds of the OBF with the hope that just as my perception of the OBF has changed, so too will



*OBF President Allen Hutson and his wife, Tera Leigh Hutson*

yours. The truth is, the OBF needs every one of you. Whether you support it through financial donations or by identifying needs in your local communities, any support you are willing to provide allows us to help others through legal services. Every time a grantee speaks of hope and change, it is because of the donations you have made.

The Oklahoma Bar Foundation is an organization worth proudly supporting, and I hope you will continue to do so in 2024 and the years to come.

---

My goal for 2024 is to continue to shed light on the mission and good deeds of the OBF with the hope that just as my perception of the OBF has changed, so too will yours.

---

Mr. Hutson is a shareholder and director in Crowe & Dunlevy's Oklahoma City office and serves as the 2024 OBF president.



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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](mailto: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](mailto:foundation@okbar.org).

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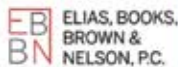
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# 2025 YLD Leadership Candidates

By *Laura R. Talbert*

**I**T'S ALREADY TIME TO announce our slot of candidates for the 2025 YLD Board of Directors. Of course, it may seem a bit earlier than usual – this year, we adjusted the nomination period and elections to align with the Annual Meeting being hosted in the summer (I am very excited about a summer Annual Meeting, and I know I'm not the only one!). But I can't believe the year is already halfway over, and we are already looking forward to next year. I have truly enjoyed serving as your YLD chair this first half of the year and am excited to see what the second half brings.

I want to take a moment to remind you that any OBA member who has been practicing for 10 years or fewer is automatically part of the OBA Young Lawyers Division. The YLD has a Board of Directors who, after qualifying with a nominating petition, run for each district and/or at-large seat. Each lawyer is a volunteer who wants to work to serve other YLD members.

The YLD is an important division of the state bar that gives new lawyers an avenue to gain leadership experience, network with more seasoned attorneys, get involved in service projects and so much more. The YLD board plays the important role of leading the division and deciding what events and service projects the YLD will

spearhead from year to year. Each officer serves a one-year term, and members of the Board of Directors serve two-year terms.

I encourage you to get to know your YLD board members. Your board members, particularly your district representatives, serve as your voice – your connection to the statewide bar association. If you see a need in your district, let your representative know. You can make a difference. And I encourage you to consider running for a leadership position in the future!

On the following page, you will find the list of 2025 leadership candidates. Nominating petitions were accepted through April 1. Since there are no contested elections this year, these candidates will automatically move forward to become your representatives at the beginning of next year. Per the YLD bylaws, "Those offices that are not contested will be deemed elected by acclamation." You can read more about the election process at [www.okbar.org/yld](http://www.okbar.org/yld).

In conjunction with this year's OBA Annual Meeting, the YLD Board of Directors will also host a meeting where your new YLD officers and directors will be announced. As a YLD member, you are invited and encouraged to attend. This is an excellent opportunity to greet your new YLD board, get to know your fellow YLD members and hear what

goes on in the YLD board meetings if you are unfamiliar.

This year, the OBA Annual Meeting will be a four-day event, held at the Embassy Suites in Norman, July 9-12. Make plans now to attend the OBA Annual Meeting and YLD board meeting. This is a fun and exciting time, and this year, the summer Annual Meeting will be a brand-new experience for all OBA members. This will be a great chance to network with other attorneys from across the state, earn your MCLE credit for the year and, of course, get more involved with your YLD!

---

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

## 2025 OBA YLD LEADERSHIP

### 2025 Chair



#### **Taylor C. Venus**

Taylor C.

Venus is a native of Ponca City who graduated from OSU with bachelor's degrees in economics

and finance. While attending OSU, Mr. Venus had the honor to be Pistol Pete. Thereafter, he obtained his J.D. and MBA at OU. While in law school, he served as the articles editor for the *Oil and Gas, Natural Resources and Energy Journal* and as an officer or representative in multiple student groups.

Mr. Venus has a passion for serving his local community and supporting other regional and statewide organizations. In Enid, Mr. Venus is the president of the Enid Public Schools Foundation, a member of Rotary and AMBUCS and actively volunteers with several other entities in Garfield County. Outside his local community, he is the current chair-elect of the OBA YLD, a member of his fraternity alumni board and president of the Cherokee Strip OSU Alumni Chapter.

In his time out of the office, Mr. Venus enjoys spending time with his friends and family, golfing, hunting and being an arm-chair expert on his favorite sports teams and political views.

### 2025 Immediate Past Chair



#### **Laura Talbert**

Laura Talbert is the chief legal officer for the Oklahoma Office of Juvenile Affairs. Ms. Talbert graduated from

the OU College of Law in 2012. In her free time, she enjoys playing volleyball and cheering on the Sooners. She has been on the YLD board for seven years and is excited to continue serving.

## UNCONTESTED ELECTIONS

*The following persons have been nominated. They are running uncontested and will be declared elected at the OBA YLD meeting in July.*

### Chair-Elect



#### **Alexandra "Allie" J. Gage**

Alexandra "Allie" J. Gage graduated from the TU College of Law in 2019. She currently works as a

civil litigation attorney at Doerner, Saunders, Daniel & Anderson LLP.

Ms. Gage has always had a strong commitment to community service and mentorship. Before attending law school, she lived and worked in the Eastern European

country of Kosovo, where she served as a community center coordinator for a center in the nation's capital. After returning, she followed her call to a legal career at the TU College of Law. She enjoyed serving as a mentor in law school and continues to support and encourage new lawyers and law students entering their legal careers.

After the COVID-19 pandemic left its mark on Oklahoma, Ms. Gage sought to find a way to further serve her recovering community. In that effort, she joined the OBA YLD as a member of the Board of Directors for District 6 and most recently served as treasurer. She dove headfirst into her duties and continues to show her willingness to serve the YLD and its members. She now seeks to continue her service on the Executive Committee as the board's chair-elect.

### Secretary



#### **Clayton M. Baker**

Clayton M. Baker is a partner at Davis & Thompson PLLC in Jay. Mr. Baker graduated

from Midwestern State University in 2011 with a bachelor's degree in criminal justice and political science. He received his J.D. from the TU College of Law in 2015 with honors. Mr. Baker and his wife, Joanna, moved to Grove in



2015 and have enjoyed raising their family on Grand Lake ever since. They have two beautiful daughters, Gentry (7) and Everly (2). Most of their free time is spent chasing Everly, cheer practice and football games for Gentry and running their homemade ice cream shop, Back Porch Ice Cream.

Mr. Baker's practice areas include probate, trusts and estate planning, real estate and civil litigation. Mr. Baker has represented clients throughout northeast Oklahoma and regularly practices in Delaware, Ottawa, Craig and Mayes counties. He currently serves as a municipal court judge for Bernice and as the president of the Delaware County Bar Association. He is a graduate of the OBA Leadership Academy and has served on the YLD Board of Directors since 2015. Mr. Baker enjoys giving back to his community as much as he can and serves on the Board of Directors for the Delaware County Children's Special Advocacy Network and the Grove Rotary Club.

*Treasurer*



**Randy G. Gordon**

Randy G. Gordon joined the Shawnee law firm of Stuart & Clover PLLC in 2021 as a

partner, bringing his wealth of litigation and creditor's rights knowledge from his previous employment. He remains a dedicated OSU fan despite receiving his J.D. from his dreaded rival, OU.

He currently serves on the OBA YLD Board of Directors, which has been personally and professionally enriching. He enjoys serving on a board that serves not only the legal community but the statewide community

at large through philanthropic efforts. Mr. Gordon also serves as the head of the community outreach committee of Emmanuel Episcopal Church in Shawnee.

Mr. Gordon shares two sons with his fellow partner, Breanne. They keep him busy! In his spare time, he loves trying new foods and watching college football. Go Pokes!

*District 3*



**Matthew Shelton**

Matthew Shelton is an Oklahoma City attorney, practicing primarily in the areas of

civil litigation, employment law and cannabis law. He is currently a member of the OBA YLD board and is the leader of the Membership and New Attorney Orientation committees. Mr. Shelton was born and raised in Kansas City, Missouri, and comes from a family of firefighters. He moved to Oklahoma City four years ago for law school after receiving his bachelor's degree from the University of Missouri – Kansas City. His goal for his career is to gain as much knowledge of the law to be able to help anyone with any legal issue that comes his way.

*District 6*



**Dillon Hollingsworth**

Dillon Hollingsworth is a member at Barrow & Grimm PC, where he has practiced in

the areas of business litigation, real estate, construction and surety law and medical marijuana since graduating from the OU College of Law in 2019. Mr. Hollingsworth

helps clients on a variety of fronts, including litigation, regulatory issues and general corporate concerns.

*Mr. Hollingsworth is resigning his position, and the position will be filled by appointment soon, pursuant to Rule 4.3 of the OBA YLD bylaws.*

*District 9*



**Mary McCann**

Mary McCann is a dedicated and accomplished attorney from El Reno. She earned her bachelor's

degree in journalism from OSU in 2018 and her J.D. from the OCU School of Law in 2021. During her academic journey, Ms. McCann had the privilege of interning at the White House in 2018, gaining invaluable experience in the nation's capital.

After law school, Ms. McCann joined the Bass Law Firm, where she honed her skills in probate and estate planning from 2021 to 2023. She currently practices in those areas at the Bedlam Law Firm in Yukon. Ms. McCann is passionate about helping individuals and families navigate complex legal matters with compassion and expertise.

Outside of her legal work, Ms. McCann is an avid runner and enjoys staying active in her community. Her commitment to excellence, combined with her warm and approachable demeanor, make her a respected member of the legal profession.

*At-Large*

**Dillon Hollingsworth**

See bio above

**Mary McCann**

See bio above



**Dayten Israel**

Dayten Israel is a graduate of the OU College of Law and currently operates a solo practice, Launchpointe

Legal, that provides transactional legal services to startups and emerging ventures. He also serves as the director of Startup OU at the University of Oklahoma, a regional entrepreneurship hub that offers numerous consulting and training programs across new venture creation, technology commercialization, fundraising and workforce development in central Oklahoma. Mr. Israel is also a founding member of the OU Entrepreneurial Law Center, where he currently serves as a legal and business advisor supporting clinical intern operations for startup and small business clients.

Since joining the OBA in 2021, he has served on several committees, including the Strategic Planning, Diversity and Law Schools committees. His involvement in the Law Schools Committee has allowed him the opportunity to explore gaps in legal education and perceived access issues for soon-to-be attorneys in the state. Mr. Israel has also held a position as an at-large director on the YLD Board of Directors for the last three years, where he has supported community service activities and general board operations.



**Chase McBride**

Chase McBride attended TU, where he received his bachelor's degree in finance and a

minor in economics. He attended graduate school at OU, where he received both his J.D. and MBA. He also has received a certificate in law and entrepreneurship from the OU College of Law and a certificate in sustainable investing from the Harvard Business School. His areas of practice largely include general litigation, business/corporate and contract litigation, family law, criminal defense and the protection of civil and property rights.

He has successfully argued in front of Oklahoma's highest courts, defended federal business litigation actions, organized multi-million-dollar business transactions and successfully defended three first-degree murder charges. He has also successfully represented four separate Oklahoma police chiefs in wrongful termination or election disputes and defended multiple politicians in the Tulsa area against defamation claims. Mr. McBride currently represents several large businesses across the state. He is also the city attorney for Salina and Pryor.

His writings have been published in the *Oklahoma Bar Journal* regarding court-ordered grandparental rights, interlocutory appeals and Oklahoma construction trusts, all topics on which he has also presented CLE courses.

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# FOR YOUR INFORMATION



## IMPORTANT UPCOMING DATES

The bar center will be closed Monday, May 27, in observance of Memorial Day and Thursday, July 4, in observance of Independence Day.

*OBA Annual Meeting: July 9-12.* Join us at this year's Annual Meeting at the

Embassy Suites in Norman. This year's meeting, 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).



## SOVEREIGNTY SYMPOSIUM 2024

The 2024 Sovereignty Symposium, presented by the OCU School of Law, has been scheduled for June 11-12 at the Skirvin Hilton Hotel in Oklahoma City. This year's event is dedicated to the late Dennis Arrow for his work in the field of Indian law and will feature keynote speaker Chief Standing Bear, principal chief of the Osage Nation. Visit [www.sovereigntysymposium.com](http://www.sovereigntysymposium.com) to register and to learn more about the event.



## CONGRATULATIONS TO THE NEWLY SWORN IN ATTORNEYS



At 10 a.m. on Tuesday, April 23, new bar admittees took their Oath of Attorney. The swearing-in ceremony was held at the Oklahoma City Community College Visual and Performing Arts Center in Oklahoma City. The oath was administered by Chief Justice M. John Kane IV. Sixty-four new attorneys were among a group who passed the bar exam this past February. Following the swearing-in, individuals signed the roll of attorneys before joining their friends and families for photos.

The Oklahoma Bar Association is proud to welcome this group of new attorney members! To view the photo gallery, visit the OBA Facebook page, [www.facebook.com/okbarassociation](http://www.facebook.com/okbarassociation).

The OBA would like to encourage these new attorney members (and all members sworn in for the first time within the last 10 years) to get involved with the Young Lawyers Division. All members of the Oklahoma Bar Association in good standing who were first admitted to the practice of law in the past 10 years are automatically YLD members, regardless of age. Learn more about the YLD at [www.okbar.org/yld](http://www.okbar.org/yld).



## LHL DISCUSSION GROUP HOSTS JUNE MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet June 6 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet June 13 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet June 27 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.



## OSAGE REIGN OF TERROR: CURRENT EXHIBIT AT FEDERAL JUDICIAL LEARNING CENTER AND MUSEUM IN OKLAHOMA CITY



From left Judge Amanda Green, Judge Suzanne Mitchell, Arvo Mikkanen, Judge Janice Loyd and Carmelita Shinn attend the exhibit's opening reception at the Federal Judicial Learning Center.

A current exhibit at the Judicial Learning Center and Museum in Oklahoma City on the federal murder trials of two men who were charged with killing Osage Indians in the early 1920s was the feature of a December seminar and exhibit opening. *The exhibit is open to the public through November 2024.*

This exhibit, titled "The Osage Reign of Terror: The Untold Legal History," is presented by the Historical Society of the U.S. District Court for the Western District of Oklahoma and tracks the murders of wealthy Osage tribal members, the arrival of agents with the Bureau of Investigation who investigated and the federal prosecutors who charged William K. Hale and John Ramsey with a number of the murders. The exhibit provides an accurate and thorough legal history of the federal trials that followed the Osage Reign of Terror, particularly the 1926 Oklahoma City trial that took place in one of the historic courtrooms in the museum. The featured events are the topic of the book and movie of the same name, *Killers of the Flower Moon*.



Osage Wedding Jacket, on display as part of this exhibit. This wedding jacket is on loan from the White Hair Memorial in Osage County.

The museum, formerly a U.S. Post Office building and a courthouse, is located at 215 Dean A. McGee Ave. in Oklahoma City. For more information on the exhibit or to schedule a guided tour, visit [www.wdokhistory.org](http://www.wdokhistory.org) or contact Executive Director Leigh Wedge by email at [leigh@fjlc.com](mailto:leigh@fjlc.com) or text at 405-697-6117.

## COMANCHE COUNTY COURTHOUSE ELEVATOR MODERNIZATION

The Comanche County Courthouse elevator modernization project began Monday, April 15. Throughout the duration of the modernization project, one elevator at a time will be updated. The first elevator will be out of order for approximately 12 to 14 weeks during its modernization. After its completion, the second elevator will be out of order for approximately 10 to 12 weeks. If you are visiting the courthouse, please use the stairs if you are able to leave the remaining elevator more accessible for those who have limitations in using the stairs. For questions, contact Johnny Owens at [jowens@comanchecountyok.gov](mailto:jowens@comanchecountyok.gov).

## 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.





## ON THE MOVE

**James Benitez** has joined Loftis Law in Ponca City. He received his J.D. from Penn State Dickinson Law in 2022 and practices in the areas of criminal defense and family law. Mr. Benitez is also licensed to practice in Kansas.

**Kelly Lynn Offutt** has joined the Oklahoma City office of Phillips Murrah as an associate attorney. She primarily practices in complex commercial litigation, civil litigation and insurance defense. She previously served as an intern for Speaker of the House John A. Boehner and defended and prosecuted matters for clients involving wrongful death, contract disputes, product liability, personal

injury, insurance bad faith and more. Ms. Offutt received her J.D. from the OU College of Law in 2017.

**Nicholas Tucker** has been sworn in as associate district judge of Pushmataha County, which is in the 17th Judicial District of Oklahoma. He began his legal career as an assistant district attorney in Kay County, where he prosecuted several felony and misdemeanor crimes. Judge Tucker received his J.D. from the TU College of Law in 2017.

**Paul Crocker** has joined Vision Bank as a vice president and trust officer. He previously practiced

in the Tulsa area as an associate attorney. Mr. Crocker has more than a decade of experience practicing in the areas of probate, trust, tax and estate planning. He received his J.D. from the OU College of Law.

**Jesse Lee Allen** has joined the Tulsa law firm of Savage O'Donnell Affeldt & Weintraub as of counsel. Mr. Allen most recently served as secretary of interior affairs for the Muscogee (Creek) Nation. He primarily practices in the areas of tribal law, real estate, business transactions and estate planning. He received his J.D. from the University of New Mexico School of Law in 2013.

## AT THE PODIUM

**Judge Amy J. Pierce** spoke on the panel for “Victims of Domestic Violence – The Justice System Working to Make a Difference” during the United Nations’ 68th Commission on the Status of Women in March. The panel was presented by the Federal Bar Association (FBA) Judiciary Division in partnership with the Fordham University School of Law and the National Association of Women Judges.

Judge Pierce is the presiding district court judge for the Choctaw Nation of Oklahoma and the chair of the FBA Tribal Judges Subcommittee.

**Marty Ludlum** presented three continuing education sessions to the Nebraska Funeral Directors Association in Lincoln, Nebraska. Topics included Federal Trade Commission regulatory changes and employment law changes.

## KUDOS

**John A. McCaleb** was named a fellow of the College of Workers’ Compensation Lawyers during the Annual Induction Dinner in Chicago on March 15. Mr. McCaleb is a shareholder of Fenton, Fenton, Smith, Reneau & Moon, where he has practiced since 1976. He devotes his practice to representing employers and insurance carriers in workers’ compensation cases. Mr. McCaleb is a graduate of the OU College of Law.

### HOW TO PLACE AN ANNOUNCEMENT:

The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you’ve moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we’d like to hear from

you. Sections, committees and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (*e.g., Super Lawyers, Best Lawyers, etc.*) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing and printed as space permits.

Submit news items to:

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*Articles for the September issue must be received by Aug. 1.*



**ESTATE PLANNING, PROBATE AND TRUST SECTION  
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**Allison Jean Black** of Joplin, Missouri, died Feb. 8. She was born Dec. 24, 1979, in Joplin and was a lifetime area resident. She graduated from OSU with a bachelor's degree in marketing and advertising and received her J.D. from the OU College of Law in 2005. She practiced with her father at the law firm of Warten, Fisher, Lee & Brown in Joplin. She also worked as a trust officer at U.S. Bank and, most recently, as a realtor for PRO 100. Ms. Black was a member of the Hope City Church and a volunteer in its nursery during morning services. Memorial contributions may be made to the Joplin Humane Society.

**Caroleen Roberta Carman** of Bethany died March 29. She was born Aug. 20, 1954. Ms. Carman received her J.D. from the OCU School of Law in 1991.

**Kenneth Ray Feagins** of Kingfisher died March 11. He was born Dec. 8, 1960, in San Antonio. He graduated from OU, where he was a member of the President's Leadership Class and Beta Theta Pi, with a bachelor's degree in liberal studies. Mr. Feagins received his J.D. from Vanderbilt Law School in 1989 and LL.M.s from Columbia Law School and the OU College of Law. His legal career began as a litigation associate with Vial, Hamilton, Koch & Knox in Dallas before he moved to Norman to start a private practice focusing on employment discrimination. Mr. Feagins then worked at the Oklahoma State Department of Health before returning to the private sector to practice oil and gas law. Memorial contributions may be made to the Beta Theta Pi Scholarship Fund or the Oklahoma Medical Research Foundation.

**Robert Samuel Flaniken** of Edmond died March 30. He was born April 12, 1944, in Lamesa, Texas. **Mr. Flaniken served in the U.S. Air Force during the Vietnam War.** He received his J.D. from St. Mary's University School of Law in San Antonio in 1974 and was licensed to practice law in both Texas and Oklahoma until his retirement in 2020.

**Bruce Darrow Gaither** of Tulsa died Nov. 11, 2022. He was born May 28, 1951. Mr. Gaither received his J.D. from the TU College of Law.

**Kelly Jeanne Kress** of Oklahoma City died March 18. She was born Aug. 1, 1985. She attended Baker University in Baldwin City, Kansas, where she was the captain of the school's volleyball team and earned a bachelor's degree in molecular biology. Ms. Kress received her J.D. from the OCU School of Law in 2011. She focused her practice on patent law and served on the YWCA board. Memorial contributions may be made to the YWCA.

**Donald Ray Lambert** of Del City died Feb. 7. He was born Sept. 12, 1946, in Guthrie. He attended the University of Central Oklahoma and received his J.D. from the OCU School of Law in 1974. Mr. Lambert worked for the state of Oklahoma for more than 30 years until his retirement.

**Tomilou Gentry Liddell** of Edmond died Nov. 20. She was born Dec. 30, 1952, in El Paso, Texas. She graduated from OU in 1974 with a bachelor's degree in professional writing and received her J.D. from the OCU School of

Law. She served as an assistant attorney general through the administrations of Attorneys General Cartwright, Turpen and Henry, then as judicial assistant for the Oklahoma Court of Appeals from 1987 to 1995. Memorial contributions may be made to Free to Live Animal Sanctuary.

**Roger Dean Rinehart** of El Reno died April 6. He was born June 17, 1931, in El Reno. He graduated from OU with a bachelor's degree in 1952 and received his J.D. from the TU College of Law in 1956. He was also a member of the American Bar Association and the Canadian County Bar Association for 68 years. Mr. Rinehart was a member of the Lawyers Helping Lawyers Assistance Program Committee and served as chair of the committee from 1990 to 1993. Under his leadership, the committee established a statewide hotline and distributed thousands of pamphlets. He was awarded the Community Interest Award from The Law and You Foundation and the Joe Stamper Distinguished Service Award from the OBA. He served others, including presenting at international workshops on lawyer substance abuse and serving as a trustee-at-large, a world service delegate and member of the AA General Service Board. Mr. Rinehart was a member of the First Christian Church of El Reno since 1956, where he served as a Sunday school teacher, deacon and elder and was also honored as elder emeritus. He practiced law in El Reno with his father from 1956 to 1977, his brother from 1956 to 1997 and his son from 1989 to 2024. He received the El Reno Public Schools Foundation Distinguished Alumni Award in 2009 and was



a longtime board member of the Russell Murray Hospice, as well as chair for many years. Memorial contributions may be made to the First Christian Church of El Reno.

**J**ames F. Robinson of Oklahoma City died Feb. 15. He was born Sept. 26, 1944, in San Diego. He graduated from Phillips University and received his J.D. from the OCU School of Law. **Mr. Robinson served in the U.S. Navy.** He briefly worked in private practice before becoming a city attorney and an assistant district attorney for Oklahoma County and later joining the U.S. Department of Justice. In his 32 years as an assistant U.S. attorney, he tried more than 150 cases and was counsel of record in more than 30 cases at the 10th Circuit Court of Appeals. He began his career in the Association of the United States Army prosecuting drug and gun crimes and later white-collar financial crime. Memorial contributions may be made to the Regional Food Bank of Oklahoma or the WildCare Foundation.

**T**amar Graham Scott of Yukon died March 21. She was born April 11, 1957. Ms. Scott graduated from OU with bachelor's degrees in psychology and philosophy in 1979. She received her J.D. from the OU College of Law in 1983. She briefly worked for the district attorney of Pottawatomie County before serving as deputy general counsel for the Oklahoma Department of Transportation.

**R**icki Walterscheid of Purcell died March 21. She was born Jan. 8, 1979, in Denton, Texas. Ms. Walterscheid graduated from OCU with a bachelor's degree in psychology. She received her

J.D. from the OU College of Law in 2004 and spent 20 years as a criminal defense attorney at the General Appeals Division of the Oklahoma Indigent Defense System. Memorial contributions may be made to Susan G. Komen.

**S**tanley Monroe Ward of Noble died March 10. He was born June 10, 1939. Mr. Ward was recruited by Bud Wilkinson to play football at OU, where he became a member of Beta Theta Pi. He then transferred to OSU, where he served as a Ford Foundation scholar and graduated with bachelor's and master's degrees in political science. He received his J.D. from the OU College of Law in 1966 and was a member of the Order of the Coif and the *Oklahoma Law Review*. He began his legal career at the law firm of Treadway & Brandmeyer in Downey, California, and got involved in the business community, serving on the Downey Community Hospital Board of Directors. He also served as president of the Downey Kiwanis Club. Mr. Ward and his family returned to Oklahoma, and he began to work as legal counsel under the leadership of Bill Banowsky. He served as a member of the OU Board of Regents and was a member of the McFarlin United Methodist Church, where he taught lessons at the Friendship Sunday School class. Memorial contributions may be made to the WildCare Foundation or the Amyloidosis Research Consortium.

**T**ony Joe Watson of Bartlesville died Jan. 21. He was born July 24, 1946, in Stillwater. Mr. Watson graduated from OSU with a bachelor's degree in production management and completed the Air Force Reserve Office Training Corps. **He was commissioned with the U.S. Air Force, reaching the rank of captain and serving as a flight instructor before being honorably discharged after five years of service.** He received his J.D. from the OU College of Law and began his legal career in private practice in Ponca City. Mr. Watson later moved to Bartlesville to join the Phillips Petroleum Co., where he served on the legal team until his retirement. Memorial contributions may be made to the Boy Scouts of America.

**F**rederick Anthony Zahn of Oklahoma City died April 1. He was born Jan. 17, 1940, in Oklahoma City. He graduated from Yale University and New York University, where he earned a master's degree in corporate law. He received his J.D. from the OU College of Law in 1965 and practiced as a management consultant for law firms in Philadelphia, New York and Chicago before returning to Oklahoma to practice labor relations. Mr. Zahn served as an adjunct professor at the OCU School of Law and the TU College of Law. He transitioned to full-time ministry in Tulsa before serving as executive director of The Education and Employment Ministry in Oklahoma City. He was involved in his community, including as a founding trustee of the Oklahoma Foundation for Excellence, a member of the Oklahoma City Council, a trustee of OCU and more. Memorial contributions may be made to Mosaic Community Church.



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



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

APPOINTMENT TO PANEL OF CHAPTER 7 TRUSTEES. The United States Trustee seeks resumes from persons wishing to be considered for appointment to the panel of trustees who administer cases filed under Chapter 7 of Title 11 of the United States Code (Bankruptcy Code). The appointment is for cases filed in the United States Bankruptcy Court for the Western District of Oklahoma. Chapter 7 trustees receive compensation and reimbursement for expenses under 11 U.S.C. §§ 326 and 330. Although trustees are not federal employees, appointments are made consistent with federal Equal Opportunity policies, which prohibit discrimination in employment. For additional information, qualification requirements, and application procedures go to <https://bit.ly/3xASRjd>.

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STARR, BEGIN & KING, PLLC IS RECRUITING A RESEARCH AND WRITING ATTORNEY for the firm's Tulsa office to assist our clients in civil litigation and insurance matters. The successful candidate will possess strong analytical and writing skills. We are looking for the right attorney to join our team and fit within our family-oriented, friendly, and low-key firm environment. Full or part time position, as well as compensation is negotiable. Candidates should submit a recent writing sample and CV to [kris.king@tulsalawyer.org](mailto:kris.king@tulsalawyer.org).

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**THE CIVIL DIVISION OF THE TULSA COUNTY DISTRICT ATTORNEY'S OFFICE** is seeking applicants for the position of Assistant District Attorney | Civil Division. Be part of a team of five attorneys who represent the county and its officials in both state and federal civil litigation. Qualified applicants must have a J.D. degree from an accredited school of law and be admitted to the practice of law in the State of Oklahoma. Ideal candidates will have experience in civil litigation, discovery, motions, oral arguments, trials and settlements. Excellent research and writing skills are required. This is an opportunity to learn the inner workings of government, become knowledgeable about a wide variety of litigation topics and tactics and contribute to your community in a meaningful way. As a state employee, you will enjoy excellent health care and retirement benefits, and have all federal, state and county holidays off. Salary commensurate with experience. Send cover letter, resume, professional references, and a recent writing sample to: Staci Eldridge seldridge@tulsacounty.org.

## POSITIONS AVAILABLE

**THE OKLAHOMA INDIGENT DEFENSE SYSTEM (OIDS)** is opening a Non-Capital Trial Division satellite office in Pryor. Positions available include: Deputy Division Chief, Attorney – Defense Counsel, and Legal Secretary. Visit <https://bit.ly/3QkQKq8> to view job announcements and apply online.

The Oklahoma Office of the Attorney General is currently seeking a full-time Director of our Organized Crime Task Force. The annual salary range for this position is \$115,000-\$135,000.

The OCTF investigates and prosecutes organized crime throughout the State of Oklahoma. Its primary mission is to investigate and prosecute complex criminal enterprises, including those that traffic controlled substances, launder money, engage in human trafficking, and commit fraud. The OCTF engages in confidential investigations to detect violations of criminal statutes and noncompliance with various regulations.

Responsibilities include, but are not limited to:

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- Working with the chief agent in charge of the OCTF to finalize intake and other policies; and
- Developing and maintaining relationships with federal, state, and local law enforcement agencies and prosecutors' offices to encourage collaboration and ensure deconfliction, when appropriate.

The ideal candidate will have leadership experience, display good judgment, be detail-oriented, possess excellent verbal and written communication skills, and have significant experience prosecuting criminal cases.

Applicants must be, or be eligible to become, licensed attorneys in the State of Oklahoma with at least seven (7) years of relevant experience. Experience as a criminal prosecutor is required. Experience prosecuting white collar, racketeering, multi-defendant, or other complex criminal cases is highly recommended.

To apply, send a cover letter, resume, and writing sample to [resumes@oag.ok.gov](mailto:resumes@oag.ok.gov) and indicate that you are applying for "Director – OCTF" in the subject line of the email.



## POSITIONS AVAILABLE

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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.

THE OKLAHOMA INDIGENT DEFENSE SYSTEM (OIDS) is currently seeking full-time Capital Counsel in our Capital Trial Division, Sapulpa office. OIDS is a state agency responsible for implementing the Indigent Defense Act by providing trial defense services to persons who have been judicially determined to be entitled to legal counsel. Capital Counsel represent clients against whom the State of Oklahoma is seeking the death penalty. Capital Counsel provide informed, zealous, and independent legal representation, within the bounds and forums provided by law, in assigned capital cases. Visit <https://bit.ly/3QkQKq8> to view job announcement and apply online.

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The Multi-County Grand Jury Unit investigates and prosecutes criminal law violations throughout Oklahoma with an emphasis on public corruption, complex crimes, and crimes with state-wide impact. The ideal candidate will display good judgment, be detail-oriented, possess excellent verbal and written communication skills, and have experience handling complex criminal cases. Applicants must be, or be eligible to become, licensed attorneys in the State of Oklahoma, with at least 3 years of experience in the practice of law. Experience as a criminal prosecutor is required. Experience prosecuting public corruption and/or financial crimes is highly recommended.

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# When Did We Become Enemies?

By M. Kent Anderson

We both believe in freedom and liberty  
We both believe in family  
When did we become enemies?

We both want our vote to count the same  
We want our voice to be heard, no matter our  
wealth or fame  
When did we become enemies?

Our ancestors came from different places  
But we grew up smiling at the same faces  
When did we become enemies?

I lean left and you lean right  
Both of us want safety and peace tonight  
When did we become enemies?

We both have mothers and fathers  
And sons and daughters  
When did we become enemies?

We worship in our own way  
Some in the night and some in the day  
When did we become enemies?

Let us argue and discuss  
And maybe sometimes even cuss  
But do not let us become enemies.

---

Mr. Anderson is a retired OBA member who practiced law for 47 years. He now lives in Davenport, Florida.



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## BASICS IN TRADEMARKS

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Elizabeth Isaac will walk you through the basics using the Taco Tuesday litigation as the guide.

**After the program, enjoy two tacos and a drink from a local taco truck!**



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Willingness is the key. **Recovery is available for everyone.** The trouble is that it's not for all who need it, but rather for those who want it.

*- Clif Gooding, Oklahoma Bar Association Member*

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