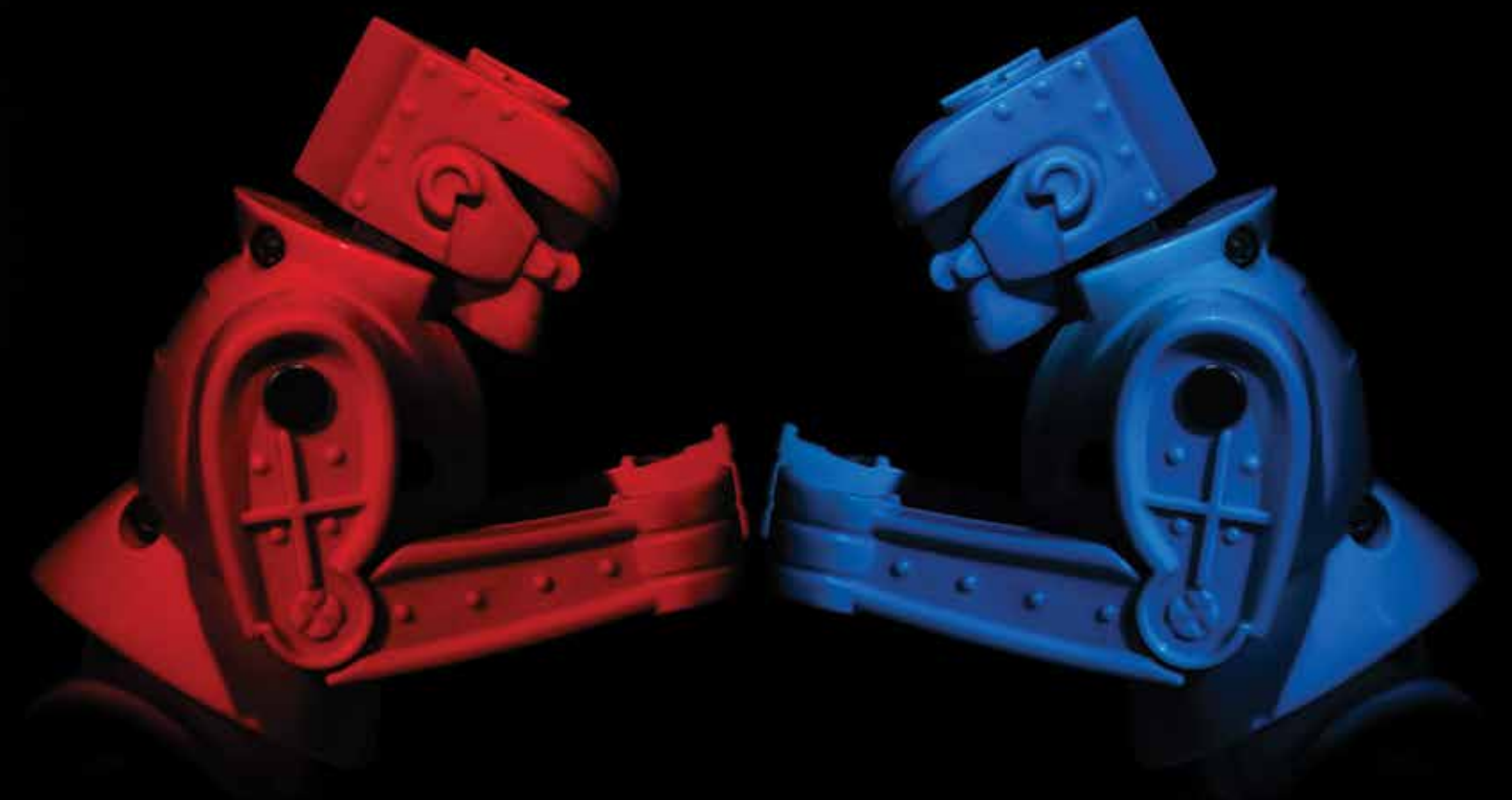
ALSO INSIDE: Professional Responsibility Commission Annual Report
Professional Responsibility Tribunal Annual Report

THE OKLAHOMA BAR
Journal
Volume 96 — No. 3 — March 2025

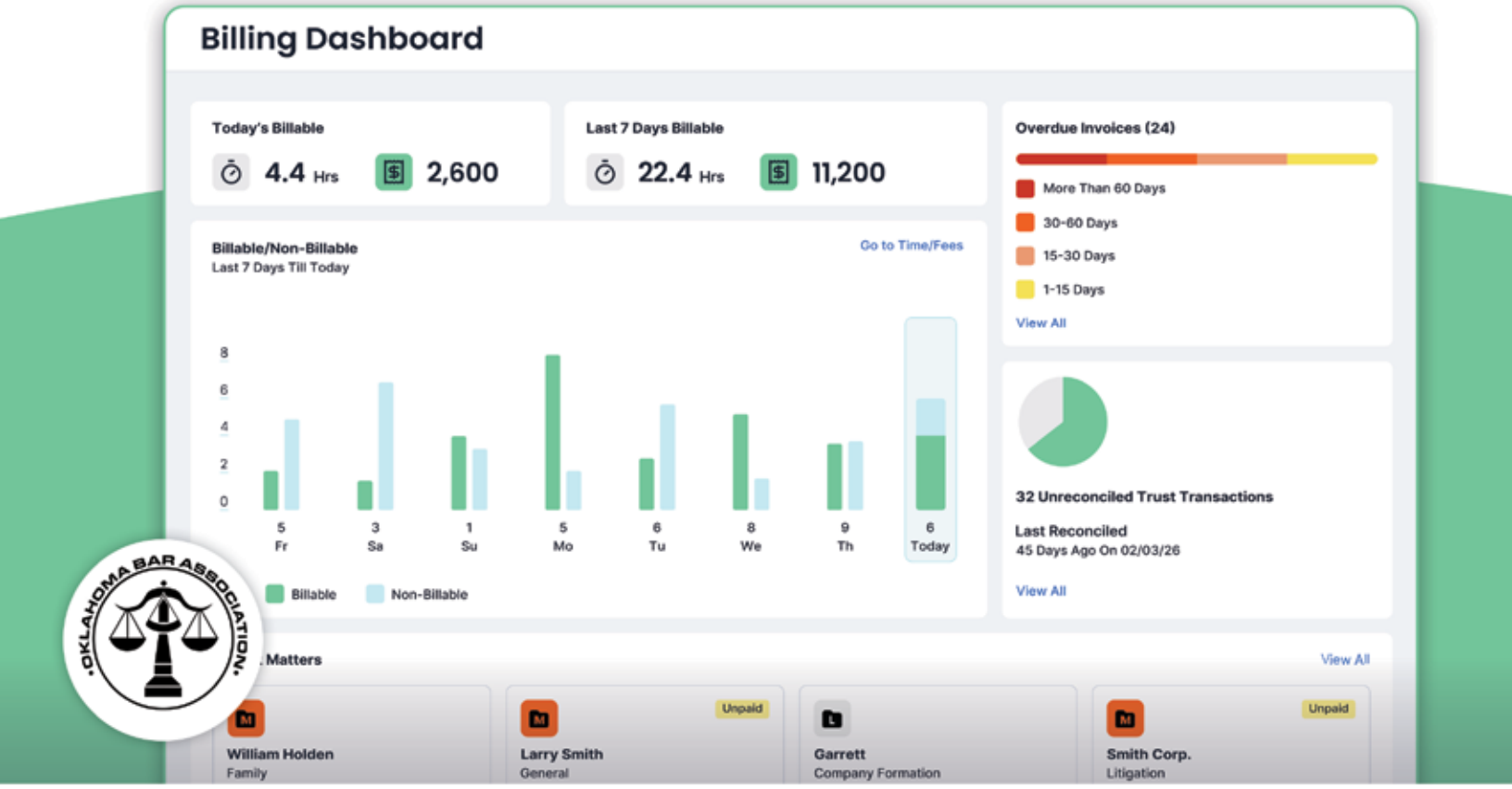
Alternative Dispute Resolution



SMOKEBALL.

Claim Your FREE Trust & Billing Software

Exclusively offered to **Oklahoma Bar Association** members, Smokeball Bill helps law firms manage trust accounting compliantly, bill easily, and get paid faster.



Scan to get FREE Smokeball Bill

*Or visit **smokeball.com/oklahomabill***

Smokeball is the trusted provider of legal practice management software to small and mid-size firms.

OBA CLE
Continuing Legal Education

CLEwebinars.com

Killers of the Flower Moon:

The Osage Murders and How Attorneys Can Combat Bias

Available On-Demand

WEDNESDAY,
APRIL 30, 2025
Noon - 1 p.m.

MCLE: 1 HOUR OF ETHICS

ABOUT THE PROGRAM:

In 1920s Oklahoma, Native Americans were treated as second class citizens. In the book and movie, *Killers of the Flower Moon*, we learn the true story about how members of the Osage Tribe were cheated out of their wealth and murdered for their oil rights. In this presentation we will watch film clips of the movie and discuss laws that discriminated against the Osage tribe.

Further, we will examine how William Hale schemed to murder members of the tribe and steal their wealth.

Finally, we will examine the work of several attorneys who led the fight against this racial persecution and helped to convict Mr. Hale of murder. The goal of the presentation is for attorneys to understand that as members of the legal profession we are in a unique position to prevent bias and discrimination.

ABOUT OUR SPEAKER: PHILIP BOGDANOFF, ESQ.

Philip Bogdanoff is a nationally recognized continuing legal education speaker on the topics of ethics, professionalism, and other related topics. Previously, as an attorney, he served as assistant prosecutor in the Summit County, Ohio Prosecutor's Office for more than 25 years, beginning in 1981. Mr. Bogdanoff argued cases before the Ohio Ninth District Court of Appeals and twenty cases before the Ohio Supreme Court including six death penalty cases - before retiring as a senior assistant prosecutor.

He is the author of numerous articles on ethics, professionalism and other related legal topics and has taught the members of numerous organizations including the National Association of Legal Administrators, as well as numerous state and local Bar associations, Prosecuting Attorney's Associations, and law firms.

★★★★★ **Robin L - Miami, Oklahoma**
"Great to see attorneys doing the right thing in a very dangerous situation"

★★★★★ **Kelcey N - Carbondale, Colorado**
"Very interesting and engaging - one of the best CLEs I have taken"

★★★★★ **Alva A - Pecos, Texas**
"It was informative and entertaining. Very good presentation."

★★★★★ **Courtney M - Austin, Texas**
"The historical facts and presentation were very engaging."

CC

TO REGISTER GO TO HTTPS://OK.WEBCREDENZA.COM/

THE OKLAHOMA BAR Journal

contents

March 2025 • Vol. 96 • No. 3

THEME: ALTERNATIVE DISPUTE RESOLUTION

Editor: Evan A. Taylor

FEATURES

PLUS

DEPARTMENTS

PAGE 55 – Chief Justice Colloquium on Civility and Ethics

Shakespeare, Lincoln and Lawyers: Protecting the Rule of Law

By D. Kenyon "Ken" Williams Jr.

"The first thing we do, let's kill all the lawyers." – Dick Butcher to Jack Cade in William Shakespeare's *Henry VI, Part 2*, Act 4, Scene 2, Lines 71-78

In context, Jack Cade was describing to his henchmen all of his plans for England if he could overthrow and replace the king. Some of Mr. Cade's ideas were for the king to set the prices for basic necessities – like food (cheap bread) and beer (making it illegal to drink small beers) – to do away with the existing monetary system and to dress all the people in the king's mandatory clothes (so all the people would be like brothers and worship the king). Mr. Butcher's statement about killing all the lawyers was either 1) a comedic quip to the effect that getting rid of all lawyers would be another benefit to the citizens of the revolutionary kingdom of which Mr. Cade wanted to be king or 2) a serious suggestion to Mr. Cade as a way to advance his revolution by removing supporters of the existing legal system. My interpretation is that Shakespeare intended for his audience to understand that Mr. Cade was making a joke with a core concept that everyone disliked lawyers, which tells me that lawyers have had public relations problems for a very long time!

D. Kenyon "Ken" Williams Jr. is a shareholder and director at Hall Estill in Tulsa.
918-594-0519
kwilliams@hallestill.com

However, Shakespeare's discussion of the concept of attacking lawyers as a way to attack the rule of law recognizes that lawyers are defenders of the legal system, and one way to undermine the existing legal system is to attack lawyers. It is also an early reminder that lawyers are critically important in defending the rule of law and helping educate the public about the very important role the rule of law plays in every level of life and government.

Young Abraham Lincoln was a staunch advocate for the rule of law. Here is an excerpt from his address to the Young Men's Lyceum of Springfield, Illinois, on Jan. 27, 1838:

> Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the revolution, never to violate in the least particular, the laws of this country; and never to tolerate their violation by others. As the patriots of '76 did to the support of the Declaration of Independence, so to the support of the Constitution and laws, let every American pledge his life, his property, and his sacred honor – let every man remember that to violate the law, is to trample on the blood of his father, and to tear the character of his own, and his children's liberty. Let reverence for the laws, be breathed by every American mother, to the lisping babe, that prattles on her lap – let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs – let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay, of all sexes and tongues, and colors and conditions, sacrifice unceasingly upon its altars.

The future President Lincoln's words seem to me to be an expanded version of ancient wisdom for a people and a country to remember principles upon which their way of life was founded and protected: "Teach them to your children; talk about them when you sit at home and when you walk along the road,

(continued on page 63)

Oklahoma Bar Association 405-416-7000
Toll Free 800-522-8065
FAX 405-416-7001
Continuing Legal Education 405-416-7029
Ethics Counsel 405-416-7055
General Counsel 405-416-7007
Lawyers Helping Lawyers 800-364-7886
Mgmt. Assistance Program 405-416-7008
Mandatory CLE 405-416-7009
Board of Bar Examiners 405-416-7075
Oklahoma Bar Foundation 405-416-7070

www.okbar.org

THE OKLAHOMA BAR
Journal

Volume 96 — No. 3 — March 2025

The Oklahoma Bar Journal (ISSN 0030-1655) is published monthly, except June and July, by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Periodicals postage paid at Oklahoma City, Okla. and at additional mailing offices.

Subscriptions $85 per year. Law students registered with the OBA and senior members may subscribe for $45; all active members included in dues. Single copies: $8.50

Postmaster Send address changes to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.

Arbitration When You Least Expect It

By Michael W. Johnston

HISTORICALLY, PREDISPUTE ARBITRATION AGREEMENTS were frowned upon by courts and legislatures. Some states enacted statutes/regulations that severely limited predispute arbitration agreements. For example, Texas required predispute arbitration agreements to be in writing and signed by all parties and attorneys who represented them. If these requirements were not met, the arbitration agreement was unenforceable as a matter of public policy. Then, along came the Federal Arbitration Act, which not only encouraged arbitration in federal court disputes but also in state court matters. The Federal Arbitration Act effectively preempted the state laws/regulations that inhibited predispute arbitration agreements. However, there was still a requirement that there actually be an agreement to arbitrate. Typically, this meant the arbitration agreement was to be in writing and signed by the parties to be bound.

In today's digital world of consumer transactions, one may be faced with a motion to compel arbitration when arbitration is nowhere to be found and when least expected. The purpose of this article is to make the reader aware of the existence of "hidden" arbitration requirements in consumer transactions and where to look for them.

ENFORCEABILITY OF ARBITRATION CLAUSES ON SUBSEQUENT PURCHASERS

A basic tenant of arbitration law has been that predispute arbitration clauses are enforceable only if agreed to by the parties. The concept of "agreed to" has been expanded to include consent by action[1] and implied consent.[2] The Texas Supreme Court in *Lennar Homes v. Whiteley*[3] seems to have gone a step further in the concept of agreement. Kara Whiteley purchased a home in Galveston, Texas, from a previous homeowner who had entered into a home construction contract with Lennar Homes. The construction contract between Lennar and the original homeowner contained arbitration provisions.

Ms. Whiteley filed suit in state court against Lennar Homes, claiming there were construction defects that resulted in mold growth and other damages. Lennar asserted that the arbitration clause in its contract with the original homeowner precluded the state court action. The matter was arbitrated, and an award was entered in favor of Lennar. Lennar then filed a motion in state court to confirm the arbitration award, and Ms. Whiteley filed a cross-motion seeking to vacate the award. Ironically, the state court agreed with Ms. Whiteley and vacated the arbitration award.

The Court of Appeals affirmed the vacatur, and the matter was appealed to the Texas Supreme Court. The Texas Supreme Court reversed and held that even though Ms. Whiteley had not specifically agreed to the arbitration provision in the original contract, she was nevertheless bound by it by virtue of "direct-benefits estoppel." The Texas Supreme Court asserted that Ms. Whiteley's construction defect claims arose out of the original

construction contract, and she was asserting the benefits of that contract in pursuing her litigation. Ms. Whiteley argued that her claims arose under a common law implied warranty of good and workmanlike construction. According to the Texas Supreme Court, in order for Ms. Whiteley to avoid the arbitration clause, her cause of action must stand "independently" of any assertion under the original construction contract.

Obviously, the full impact of this case has not yet been felt. However, the question arises as to whether an arbitration clause in a retail installment agreement is applicable to a subsequent purchaser of consumer items, such as appliances, automobiles, etc.

ARBITRATION AS TO THIRD-PARTY BENEFICIARIES

In the recent case of *SCI Texas Funeral Services v. Gonzalez*,[4] the Corpus Christi Court of Appeals held that a third-party beneficiary is bound by an arbitration clause in a contract even though they never specifically agreed to the contract, much less the arbitration clause. This case involved funeral and embalming services alleged to have been performed negligently. The details are gory and will not be recited here. A family member, who was not a party to the funeral services contract, filed suit in state court. The funeral services company asserted that there was an arbitration clause in the original contract that should be enforced, even though the plaintiff was not a party to the contract. The Corpus Christi Court of Appeals held that the family member was a third-party beneficiary of the original contract and was, therefore, bound by the arbitration clause. The Corpus Christi Court of Appeals recited a number of ways in which nonparties to a contract can be bound by arbitration agreements in contracts they did not sign. These circumstances are listed as:

1) The nonsigning party was incorporated by reference into the contract;
2) Assumption of the contract by the nonsigning party;
3) Agency by the nonsigning party and the signing party;
4) Alter ego;
5) Equitable estoppel; and
6) Third-party beneficiary.

ABATEMENT

In light of the expansion of the applicability of arbitration, the question arises as to what happens when the applicability of arbitration is contested in court. Does the arbitration proceed while the matter is being decided in court, or does the arbitration proceedings stop pending a court determination? Appellate courts, both state and federal, were significantly divided on this issue. Fortunately, the question has now been answered.

In a recent United States Supreme Court case, the Supreme Court held that a district court must stay its proceedings while an interlocutory appeal taken pursuant to 9 U. S. C. §16(a) on the question of arbitrability is ongoing.[5]

In that case, Coinbase operates an online currency and cryptocurrency exchange platform. Abraham Bielski created a Coinbase account in 2021, and shortly after opening it, he alleges that a scammer fraudulently accessed his account and stole more than $30,000 from him. Mr. Bielski alleged that Coinbase ignored his attempts at communication until he filed this lawsuit.

Mr. Bielski alleged in his lawsuit – on behalf of himself and other similarly situated persons – that Coinbase is a "financial institution" within the meaning of the Electronic Funds Transfer Act (EFTA) and that it fails to comply with its responsibilities under the EFTA, including conducting a timely and good-faith investigation of fraudulent transfers. Coinbase moved

to compel arbitration based on its user agreement, and the district court denied the motion to compel on the grounds that the arbitration clause and delegation clause were unconscionable. On appeal, the U.S. Court of Appeals for the 9th Circuit denied Coinbase's motion to stay.

The Supreme Court granted *certiorari* and held that a district court must stay its proceedings while an interlocutory appeal is taken pursuant to 9 U.S.C. §16(a) when the question of arbitrability is ongoing.[6]

CONCLUSION

The evolving landscape of arbitration underscores the importance of vigilance in both consumer and legal contexts. Hidden arbitration clauses, enforceability in scenarios involving subsequent purchasers and their binding nature on third-party beneficiaries demand careful examination of agreements and transactional documents. Moreover, recent judicial interpretations – such as those in *Lennar Homes v. Whiteley, SCI Texas Funeral Services v. Gonzalez* and *Coinbase, Inc. v. Bielski* – illustrate the judiciary's readiness to enforce arbitration clauses even when consent is not explicitly granted. These developments emphasize the necessity for legal practitioners to anticipate arbitration as a potential element in disputes, regardless of its initial visibility. By remaining aware of these trends, attorneys can better navigate the challenges posed by arbitration in both anticipated and unexpected circumstances.

ABOUT THE AUTHOR

For almost 45 years, Michael W. Johnston has been an active civil litigator. He was first licensed in Texas and then later in Oklahoma. He also has an active arbitration practice that includes serving as a panel member on several national arbitration organizations as well as conducting arbitrations through his individual practice. Beginning in 2020, Mr. Johnston's practice has been primarily serving as an arbitrator. He has also been a member of the OBA Alternative Dispute Resolution Section for many years, as well as other arbitration-related organizations.

ENDNOTES

1. *Lamps Plus, Inc., et al. v. Varela* (U.S. S. Ct. 2019).
2. *Green Tree Financial Corp. Ala. v. Randolph*, 531 U. S. 79, 89 (2000).
3. *Lennar Homes v. Whiteley*, 66 Tex. Sup. Ct. J. 8740.
4. *SCI Texas Funeral Services v. Gonzalez*, No. 13-21-00453-CV, (Tex. App. Corpus Christi) (Jan. 13, 2022).
5. *Coinbase, Inc. v. Bielski*, 22-105 (U.S. 2023).
6. *Id.*

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

The Case for Family Law Arbitration in Oklahoma

By Edward G. Lindsey

WITH NEW LAWS, PRESSURES ON THE COURT SYSTEM and the economic reality of escalating legal costs, it is time for arbitration to be considered a serious method of alternative dispute resolution in family law cases.

The Oklahoma Legislature recently amended the family law code to require courts to conduct a substantive (not proffer) temporary order hearing on child custody, visitation, child support and other ancillary matters, including property.[1] Where domestic violence is alleged, the same substantive hearing must be held within 10 days.[2] The amendment became effective Nov. 1, 2024.[3] This may cause significant docket congestion in the larger counties.

Practitioners may anticipate "cattle call" dockets with multiple cases being disposed of with rapid-fire dispensation of the "substantive" hearings to meet this statutory deadline. Arbitration of these temporary order hearings and family law matters in general – if embraced by the legal community – could alleviate much of the anticipated log jam. It would give parties the time and expert attention needed to resolve their initial temporary order, if not their entire case, thereby avoiding the overcrowded docket.

Another common issue in family law practice is piecemeal trials, where the court hears evidence on nonconsecutive days over several months. This is inefficient, as both counsel and the court must reprepare by reviewing previous testimony each day the matter is set. This "start-stop" process increases preparation time and counsel fees. Arbitration, like any other ADR process, involves additional expenses that the parties voluntarily incur.[4] The parties select their arbitrator and share the associated hourly rates.[5] The cost savings arise from the efficiency of the process.[6] Preliminary conferences and hearings are scheduled promptly, either virtually or by conference call, and requests for discovery and interim relief are handled swiftly.[7] This approach saves parties thousands of dollars in attorney and expert fees and reduces their time away from work and home obligations.[8] The arbitrator may schedule a hearing on consecutive days to avoid the inefficient "start-stop" approach to family litigation.

Arbitration is generally faster than traditional litigation.[9] Arbitrators set and enforce deadlines for discovery, appraisals and expert reports, scheduling hearings with input from the parties or their counsel.[10] The final award is typically issued within 30 days.[11] Family law cases in traditional litigation can take months or even years to conclude, as trial courts are often overwhelmed with an increasing number of self-represented parties.[12]

FAMILY LAW MATTERS ARE SUBJECT TO ARBITRATION IN OKLAHOMA WITH JUDICIAL REVIEW

Oklahoma law explicitly authorizes family law arbitration in one situation. Title 43 O.S. §109H states:

> In the event of a *dispute between the parents having joint custody of a child as to the interpretation of a provision of the plan, the court may appoint an arbitrator to resolve the dispute. The arbitrator shall be a disinterested person*

knowledgeable in domestic relations law and family counseling. The determination of the arbitrator shall be final and binding on the parties to the proceedings until further order of the court.

If a parent refuses to consent to arbitration, the court may terminate the joint custody decree.[13] [Emphasis added.]

Although this provision is limited to the narrow instance of parties disagreeing to "an interpretation of a provision of the (joint custody) plan," it is instructive as to the Oklahoma Legislature's intent to allow arbitration as a dispute resolution method in family law disputes. The qualifications of the contemplated arbitrator are simply impartiality and knowledge of domestic relations law and family counseling.[14] By making the decision "final and binding" until further order, the statute embraces the finality of arbitral decisions. Likewise, it also teaches that the consequences may be severe for a party who refuses to participate in a court-ordered arbitration by imposing the possible sanction of losing joint custody.

No Oklahoma case law explicitly allows or prohibits arbitrations involving child custody disputes. It is difficult to imagine that appellate courts would allow it in certain situations, such as contemplated by the joint custody statute, but not in others.

OKLAHOMA LAW ALLOWS PRIVATE DIVORCE TRIALS UNDER THE REFEREE STATUTE IF THE COURT RETAINS JURISDICTION TO ADOPT OR REJECT THE REFEREE'S FINDINGS

The parties to a civil action, such as a divorce or other family law matter, may consent, in writing, to the submission of factual and legal issues to a referee.[15] Oklahoma law does not prohibit private attorneys from serving as a referee if they would otherwise be qualified to serve as a judge.[16] The referee's decision is subject to judicial oversight from the appointing judge, with a process for parties to object to the referee's findings.[17] In a private trial proceeding, the parties agree to use the referee statute to resolve their issues and submit an agreed order for court approval. When the private trial ends, the referee submits written findings subject to the parties' objections, which must be approved by the court in a decree.

Arbitration is an adjudicative process, like a private trial by a referee. There is little to no distinction between the two processes. A best practice for a family court arbitration under current Oklahoma law would be for the parties to have their agreement to arbitrate submitted as a referral order. The referral order would approve the arbitration, designate the qualified arbitrator or arbitral institution and appoint the arbitrator as a referee of the court under 12 O.S. §611 *et seq*. When the arbitration concludes, the parties must submit the award with findings of fact and conclusions of law consistent with the referee statute as a decree or final order for approval to the court. Then,

A best practice for a family court arbitration under current Oklahoma law would be for the parties to have their agreement to arbitrate submitted as a referral order. The referral order would approve the arbitration, designate the qualified arbitrator or arbitral institution and appoint the arbitrator as a referee of the court under 12 O.S. §611 *et seq*.

either party may challenge the award under both the Oklahoma Uniform Arbitration Act and the Trial by Referee Statute.

FAMILY ARBITRATIONS DIFFER FROM OTHER ARBITRATIONS BECAUSE THEY REQUIRE COURT APPROVAL FOR THE REFERRAL FOR ARBITRATION AND THE CONFIRMATION OF THE AWARD

In civil arbitration, it is common for a party to participate in an arbitration and comply with an arbitral award voluntarily, keeping the process and award confidential and without the necessity of court intervention.[18] This is impossible in family law because only the court has the authority to issue orders granting a divorce or legal separation,[19] divide property[20] and make custody decisions about children.[21]

The court in a family law matter must divide the property, whether real or personal, that has been jointly acquired during their marriage in a manner "as may appear just and reasonable."[22] The court may allow alimony to either spouse, out of the separate property of the other, in an amount "the court shall think reasonable."[23] The parties to a divorce case may negotiate a settlement of their case. If they reach an agreement, it must be presented to the court for consideration. However, such an agreement is not binding on the court.[24]

Within this framework, the parties may negotiate an arbitration agreement for their family law matter to be heard in full or in part by an arbitrator. However, the arbitrator's award, like a settlement agreement, must be approved by the court. The court must find the award as to property and spousal support "fair, just, and reasonable."[25] The court must also find it has jurisdiction over the children and any child custody or child-related arbitral decisions to be in the child's best interests.[26] In this process, family law arbitral awards are subject to a mandatory judicial review, unlike other arbitral awards and much like family law settlement agreements.

THE NATIONAL TREND TOWARD FAMILY LAW ARBITRATION AND THE UNIFORM FAMILY LAW ARBITRATION ACT (2016)

In 2016, the Uniform Law Commission (ULC) enacted the Uniform Family Law Arbitration Act (UFLAA), creating a potential statutory scheme for states to enact.[27] The ULC and the American Academy of Matrimonial Lawyers (AAML) enacted resolutions for its passage nationwide.[28] According to the UFLAA, a "family law dispute" refers to a contested issue falling under the state's family or domestic relations law. These disputes often involve conflicts over marital property, spousal support, child custody and child support. The act specifies that an arbitrator may not:

- Grant a divorce
- Terminate parental rights
- Grant an adoption or guardianship of a child or incapacitated person
- Determine the status of a child needing protection[29]

Family law disputes differ from traditional commercial disputes for the purposes of arbitration, and the UFLAA includes specific provisions not found in the Uniform Arbitration Act or the Revised Uniform Arbitration Act.[30] These provisions are designed to protect vulnerable individuals, such as children and victims of domestic violence, during the arbitration process.[31] For example, unless both parties waive the requirement, the UFLAA mandates that arbitrators receive training in identifying domestic violence and child abuse before handling a family law dispute. If an arbitrator detects abuse, they must pause the arbitration and refer the case to court.[32] Similarly, if a party is under a protection order, that part of the dispute will be directed to court for resolution.[33]

The UFLAA mandates a thorough judicial review of arbitration awards related to child issues.[34] While awards about property or spousal support undergo limited judicial review, child-related awards can be confirmed only by a court if they comply with applicable law and serve the best interests of the child.[35] Additionally, states have the option to enact *de novo* review of child-related awards.[36] Some states may prefer to exclude child-related disputes from arbitration, and the act offers an opt-out provision for this purpose.[37]

Once the court confirms an award, a party can seek a modification under state laws governing post-decree modifications. If both parties consent, these modification actions can be resolved through arbitration.[38]

In 2023, the state of Washington and the District of Columbia enacted the UFLAA, joining Arizona, Hawaii, Montana and North Dakota. The Uniform Law Commission website maintains a record of states that have adopted any uniform law.[39] Family law arbitrations may be allowed in states where the UFLAA has not been enacted. A recent ABA survey

found that 49 states, including Oklahoma, allow family law arbitrations as to property and financial issues.[40] Additionally, 37 states, including Oklahoma, allow family law arbitrations regarding child custody issues, with many requiring some form of judicial review of the awards.[41]

ISN'T MEDIATION A BETTER OPTION THAN ARBITRATION?

Thirty-plus years ago, lawyers were reluctant to use mediation in attempting settlement of their cases.[42] The anxiety of revealing too much of their best evidence or disclosing their trial strategy was compounded by a fear of potentially demonstrating their negotiation weaknesses.[43] Mediation is now considered mainstream – frequently ordered by courts before pretrial conferences are scheduled, used in almost every case and considered the "best hope" in resolving difficult disputes.

Mediation is not always effective for numerous reasons. Mediation often fails due to errors of valuation. Effective communication of valuation is crucial, as poor signaling can lead to misunderstandings and hinder settlement.[44] Another reason for mediation failure is the lack of shared factual grounding. Parties may hesitate to share information, but transparency is essential for building trust and settling.[45] Important information revealed during mediation can significantly affect the other side's valuation and facilitate resolution.[46] High emotionality can cloud judgment and impede mediation.[47] Litigants often engage in disputes due to perceived injustices or personal stakes, leading to irrational decision-making.[48] Emotional investment from both parties and their counsel can create barriers to settlement, making it essential to manage emotions effectively during mediation.[49]

In these circumstances, arbitration can be a better option because parties in a family law matter may not build a consensus in mediation and may also not want the expense and delays inherent in litigation.

CONCLUSION

Family law arbitration in Oklahoma presents a promising avenue for enhancing the efficiency and effectiveness of family law proceedings. The recent legislative changes underscore the state's commitment to reducing court congestion, providing speedy resolution to proceedings and minimizing costs associated with traditional litigation. Arbitration offers a streamlined process, leading to more timely resolutions and benefiting all parties involved. Oklahoma's move toward embracing arbitration aligns with the national trend of adopting the Uniform Family Law Arbitration Act, reflecting a broader recognition of arbitration's potential in family law matters.

However, it is crucial to maintain a balance between the benefits of arbitration and the necessity of judicial oversight. While arbitration can expedite proceedings and provide a more flexible framework for dispute resolution, the role of the judiciary remains vital in ensuring the rights and interests of all parties, particularly children, are adequately protected. As Oklahoma continues to integrate arbitration into its family law system, careful consideration must be given to preserving the integrity and fairness of the process. By doing so, the state can harness the full potential of arbitration to improve the administration of family law while safeguarding the essential principles of justice.

ABOUT THE AUTHOR

Edward G. Lindsey serves as the director of the Oklahoma Arbitration Center and is a practicing attorney in Tulsa. He earned his J.D. from the TU College of Law in 1992, and in 2023, he received an LL.M. in alternative dispute resolution from the University of Aberdeen School of Law and was named a Fellow of the Chartered Institute of Arbitrators in 2024. Mr. Lindsey is admitted to practice in all Oklahoma state and federal courts, the Muscogee Creek Nation, the 10th Circuit Court of Appeals and the U.S. Supreme Court. His legal focus includes alternative dispute resolution, family law and civil litigation.

ENDNOTES

1. *See* 43 O.S. §110(B)2.
2. *Id.*
3. *Id.*
4. Carolyn Moran Zack, *Family Law Arbitration: Practice, Procedure, and Forms*, ABA Family Law Section, 2020 (updated as of April 3, 2023).
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. Carolyn Moran Zack, *Family Law Arbitration: Practice, Procedure, and Forms*.
10. *Id.*
11. *Id.*
12. *Id.*
13. *See* 43 O.S. §109(H).
14. *Id.*
15. *See* 12 O.S. §612.
16. A referee must be appointed by the court and must possess qualifications like those of a judge. Specifically, the referee should be a lawyer and be specially qualified for their duties (*Juvenile v. Jennings*, 541 P.2d 229 (1975)). This is consistent with the requirement that referees in juvenile cases must be lawyers and specially qualified for their duties (*Juvenile v. Jennings*, 541 P.2d 229 (1975)). Other states act similarly. The referee must be law-trained and licensed to practice law. This requirement is essential for referees who are given duties such as conducting hearings, calling witnesses, ruling on the admissibility of evidence and making findings of fact and recommendations (*Schmidt v. Thompson*, 347 N.W.2d 315 (1984)). This ensures that referees have the necessary legal expertise to perform their duties effectively.
17. *See* 12 O.S. §622.
18. *See* American Bar Association, GP Solo eReport, "Confidentiality in US Arbitration," March 23, 2023. Confidentiality in U.S. Arbitration.
19. *See* 43 OS §112 *et seq*.
20. *Id.*
21. *Id. See* also *Jones v. White* 430 P3d. 544 (Civ. App. 2018). The parties cannot consent to subject matter jurisdiction to a forum noncompliant to the *Oklahoma Uniform Child Custody Jurisdiction Act* (OUCCJEA) found at 43 O.S. 551-201(a).
22. *See* 43 O.S. §121. *See* also *Adams v. Adams* 11 P.3d 220 (Civ. App 2000).
23. *Id.*
24. *See Acker v. Acker,* 1979 OK 67, 594 P.2d 1216, *Seelig v. Seelig,* 1969 OK 160, 460 P.2d 433. In *Dickason v. Dickason,* 1980 OK 24, 607 P.2d 674, the court held that a settlement agreement is not enforceable, absent its approval by the court. It shall not be approved unless it is fair, just and reasonable.
25. *Id.*
26. *See* 43 OS §112. *See* also *Jones v. White supra*.
27. Uniform Law Commission, *The Uniform Family Law Arbitration Act* (2016).
28. *Id. See* also, "Resolution in Support of Divorce and Family Law Arbitration," adopted March 14, 2024.
29. Uniform Law Commission, *The Uniform Family Law Arbitration Act.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. Linda Diane Elrod, "Review of Law in the 50 States in 2023: ICWA Survives and State Courts Tackle Thorny Jurisdictional Issues," *Family Law Quarterly* (Aug. 12, 2024), ABA Family Law Section.
40. Carolyn Moran Zack, Chart F from *Family Law Arbitration: Practice, Procedure, and Forms*, ABA Family Law Section, 2020 (updated as of April 3, 2023).
41. *Id.*
42. Maria R. Volpe and Charles Bahn, "Resistance to Mediation: Understanding and Handling It," *Sociological Practice*: Vol. 10: Issue 1, Article 5, 1992. Available at https://bit.ly/4jOYjTo.
43. *Id.*
44. Nicole Nguyen, "Three Reasons Mediations Fail and Three Ways to Move Forward," *Advocate*. August 2020.
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*

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

Mindful Dispute Resolution: Enhancing Alternative Dispute Resolution Through Mindfulness and Restorative Justice Techniques

By Zana L. Williams and Kathryn R. Wilson

INTRODUCTION

In today's ever-evolving legal landscape, the significance of effective communication and conflict resolution cannot be overstated. As attorneys, we frequently navigate multifaceted disputes where success hinges not only on legal expertise but also on a deep understanding of human emotions, interpersonal dynamics and the psychological underpinnings of conflict. While statutes and case law provide the legal framework, true resolution often depends on the ability to listen, empathize and respond thoughtfully – skills that extend far beyond traditional legal training. This article delves into how integrating mindfulness techniques and restorative justice principles can transform alternative dispute resolution (ADR) practices. By fostering greater emotional intelligence, enhancing focus and encouraging compassionate problem-solving, these approaches equip attorneys with powerful tools to strengthen negotiation and mediation efforts. This ultimately leads to more constructive, equitable and enduring outcomes.

THE IMPORTANCE OF ADR IN TODAY'S LEGAL ENVIRONMENT

Today, ADR encompasses various legally recognized processes outside of litigation, such as negotiation, mediation and arbitration.[1] Amongst these, negotiation, the most common dispute resolution method, involves direct communication between parties to reach a settlement.[2] Mediation introduces a neutral third party to facilitate negotiations, while arbitration allows a private adjudicator to issue binding decisions.[3] Given the range of these processes, ADR can often lead to more efficient and amicable resolutions outside of litigation, preserving relationships and reducing the emotional toll on all parties involved.[4] However, the success of ADR frequently depends on the communication skills and emotional intelligence of the attorneys involved. Effective negotiations require more than presenting legal arguments; they involve reading emotions and responding appropriately – skills that can be enhanced through mindfulness and intentional practice.

SETTING THE TONE: THE ATTORNEY'S ROLE IN ADR

Attorneys are more than legal advocates; they are navigators of human emotion, tasked with guiding clients through the potentially turbulent processes of ADR. As such, an attorney's demeanor plays a critical role in setting the tone for the entire process. With a mindful and empathetic approach, attorneys can transform tense negotiations into productive dialogues where clients feel comfortable expressing their concerns. This emotional stewardship is essential for achieving meaningful resolutions, as unresolved emotions can disrupt even the most carefully planned legal strategies. Understanding a client's true interests requires patience and trust building, as clients may withhold sensitive information due to embarrassment, fear or misunderstanding.[5] Attorneys are responsible for creating a space where clients feel informed, heard and respected.

Rules 1.4 of the ABA Model Rules of Professional Conduct and the Oklahoma Rules of Professional Conduct reinforce this responsibility by stating, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[6] Clear communication of the matter can reduce anxiety and empower clients to participate meaningfully in the process. However, attorneys and clients may not always agree on what best serves the client's interests. While some attorneys defer to clients' judgments, others may guide clients when perceptions conflict with legal or practical realities.[7] Once interests are identified, attorneys can work collaboratively with clients to establish a bottom line by evaluating factors such as case dismissal likelihood, potential damages, legal costs and the emotional toll of prolonged disputes.[8] This process ensures clients remain informed, emotionally prepared and able to pursue outcomes that balance their legal and personal priorities. Through active listening, managing expectations

and fostering trust, attorneys can promote transparency and guide clients toward meaningful and sustainable resolutions.

Moreover, setting the right tone in ADR extends beyond client interactions to include dealings with opposing counsel and mediators. By demonstrating professionalism, patience and respect, attorneys can de-escalate conflicts and encourage reciprocal behavior, fostering a more constructive negotiation environment. This approach supports an aspiration-oriented negotiation strategy, where attorneys focus on broader goals rather than rigid bottom lines.[9] By emphasizing aspirational targets rather than minimum acceptable terms, they can unlock creative problem-solving opportunities while reducing psychological stress and enhancing negotiation outcomes.[10] In this context, attorneys must also balance the "cool" and "warm" themes of ADR to address both legal and relational needs.[11] The "cool" theme emphasizes cost-efficiency, highlighting how ADR can save time and reduce expenses compared to traditional litigation – a practical benefit for clients seeking streamlined resolutions.[12] The "warm" theme focuses on the human dimension of dispute resolution, emphasizing outcomes that meet the underlying needs and interests of *all* parties involved.[13] This approach transforms "adversary conflict" into opportunities for "reconciliation" and "mutual understanding."[14] Using a warm, human-centered perspective positions ADR as more than a cost-saving mechanism[15] – it becomes a pathway to deeper, more sustainable resolutions.

UNDERSTANDING MINDFULNESS AND RESTORATIVE JUSTICE IN ADR

Being mindful in ADR requires staying fully present and engaged in the moment, free from distractions. Mindfulness involves cultivating a moment-to-moment awareness of one's emotions, thoughts and surroundings without judgment.[16] By focusing attention on the breath and gradually expanding awareness to bodily sensations, emotions and thoughts, practitioners foster "bare attention," a nonjudgmental state that enhances equanimity and focus.[17] Integrating this approach into negotiations and mediations allows practitioners to communicate more effectively, reduce stress and approach conflict resolution with clarity and purpose. To avoid falling into patterns of mindlessness, professionals must consciously remain attentive and flexible.[18] Rather than relying on automatic behaviors or preconceived assumptions, they should approach each case with a fresh perspective and adapt their methods to the unique needs of the situation.[19]

Mindfulness practices counteract tendencies such as excessive self-centered focus, strong negative emotions and automatic, habitual thinking.[20] In emotionally charged ADR proceedings, these challenges can derail negotiations by clouding judgment and perpetuating reactive behaviors. By fostering nonjudgmental awareness and equanimity, mindfulness allows practitioners to shift from automatic responses to deliberate, thoughtful actions, promoting clarity and reducing emotionally driven mistakes.[21] Tactical pauses, a mindfulness-inspired tool, give practitioners time to process information and regulate their emotions before responding. This enhances active listening, a fundamental skill in conflict resolution, by enabling attorneys to manage internal reactions and fully engage with the other party's concerns.[22] Legal disputes are inherently stressful, and mindfulness practices – like deep breathing, meditation and guided visualization – are invaluable for stress management.[23] These evidence-based techniques have been shown to enhance emotional regulation and improve overall well-being, enabling individuals to maintain clarity and composure during complex negotiations.[24] By promoting a balanced approach to emotional and cognitive engagement, mindfulness and its techniques not only enhance attorney performance but also align with the restorative principles of ADR, encouraging open, judgment-free dialogue and fostering genuine understanding among parties.

Restorative justice, rooted in Indigenous traditions, emphasizes repairing harm, fostering accountability and promoting healing through inclusive processes that engage all affected parties.[25] Unlike traditional punitive systems that focus on punishment and deterrence, restorative justice focuses on resolving conflicts, reestablishing order and harmony within the community and promoting healing for all involved – victims, offenders and the broader community.[26] A defining feature of restorative justice is its ability to address the root causes of conflicts rather than merely their symptoms, expanding discussions beyond legal violations to explore emotional, relational and systemic issues.[27] By uncovering deeper dynamics and fostering collaboration, restorative justice

While ADR methods, like mediation and arbitration, resolve disputes within legal boundaries, incorporating principles of restorative justice can expand the scope to include broader relational and social dimensions of the parties involved.

enables participants to find creative solutions that promote long-term resolution and reconciliation.

As such, restorative justice offers a complementary framework that broadens the scope of traditional ADR mechanisms. While ADR methods, like mediation and arbitration, resolve disputes within legal boundaries, incorporating principles of restorative justice can expand the scope to include broader relational and social dimensions of the parties involved. By addressing the root causes of harm and promoting collaborative solutions, restorative justice enhances ADR by not only resolving immediate issues of the parties but also strengthening relationships and party communities.[28] Restorative justice principles emphasize the importance of dialogue that acknowledges harm, fosters accountability and seeks to repair relationships. Restorative justice encourages open and restorative dialogue, where parties can openly express their experiences, recognize the impact of actions and collaboratively identify ways to move forward. This approach shifts the focus from assigning blame to finding constructive paths toward resolution, creating opportunities for reconciliation even in the most challenging disputes. This holistic approach paves the way for a more just and harmonious society, fostering long-term resolution and reconciliation for parties and community well-being.[29]

INTEGRATING KEY PRINCIPLES INTO ADR PRACTICES

Effective conflict resolution begins with self-awareness and clarity, which are critical for achieving win-win outcomes. Negotiators who understand their own needs and interests before entering discussions are better equipped to approach conversations with purpose and focus. This inner clarity fosters confidence and reduces defensiveness, enabling attorneys to articulate their positions effectively without becoming reactive. When combined with the mindset of viewing the opposing party as a collaborator rather than an adversary, these qualities encourage constructive dialogue.[30]

This shift in perspective promotes the exploration of creative solutions that address the needs of all parties, transforming confrontational exchanges into cooperative discussions. Empathy plays a pivotal role in achieving these outcomes. By understanding and validating the emotions and concerns of others, negotiators create an environment of trust and support. Attorneys who prioritize empathy are better positioned to address underlying issues, helping to align the interests of all stakeholders and ensuring a more inclusive resolution process.

The integration of mindfulness and restorative justice principles into ADR practices enhances both procedural efficiency and emotional responsiveness. By embedding these practices into ADR, attorneys can transform conflict resolution into a more compassionate and equitable process. This approach not only advances legal advocacy but also ensures that disputes are addressed holistically,

balancing legal, emotional and relational considerations. Ultimately, the combination of mindfulness, empathy and restorative justice principles empowers attorneys to achieve win-win outcomes, creating resolutions that are not only effective but also deeply meaningful for all involved.

A PRACTICAL GUIDE TO MINDFUL DISPUTE RESOLUTION

To incorporate mindfulness and restorative justice into ADR practices, attorneys can employ several techniques.

Mindful Breathing

Mindful breathing serves as a foundational practice for attorneys preparing for negotiation or mediation. Taking a few moments to inhale deeply through the nose, hold the breath and exhale slowly through the mouth helps center the mind and reduce anxiety. This calming technique creates a sense of mental clarity and emotional stability, enabling attorneys to enter discussions with composure and focus. By approaching negotiations from a state of calm, attorneys are better equipped to respond thoughtfully rather than react impulsively when tensions rise.

Setting Intentions

Setting clear intentions before entering discussions can also guide negotiations toward constructive resolutions. Attorneys benefit from taking time to clarify desired outcomes while cultivating a collaborative mindset. This intentional practice shifts the focus from confrontation to resolution, reinforcing a shared commitment to problem-solving. By defining goals with mutual benefit in mind, attorneys can frame the discussion in a way that encourages cooperation rather than adversarial exchanges.

Reflective Listening

Reflective listening is another essential technique that supports effective communication in ADR. By paraphrasing what the other party has expressed before responding, attorneys demonstrate genuine understanding while fostering mutual respect. This practice validates the other party's perspective, making them feel heard and understood, which is critical for de-escalating conflict. Reflective listening also encourages a more productive exchange of ideas, helping all parties move toward creative, mutually beneficial solutions.

Emotional Check-Ins

Emotional check-ins during negotiations further enhance mindfulness-based communication. Attorneys should regularly assess their emotional states and be aware of rising frustration, impatience or defensiveness. When negative emotions surface, taking a brief pause to recalibrate can prevent these feelings from dominating the conversation. Recognizing emotions in real time allows attorneys to respond with greater empathy and professionalism, promoting a more mindful and balanced approach to conflict resolution.

CONCLUSION

As Oklahoma attorneys, we have a unique opportunity to shape the future of alternative dispute resolution by embracing mindfulness techniques and principles of restorative justice. Integrating these approaches into our practice enhances our ability to communicate effectively, manage emotions and build trust among parties. Mindfulness allows us to remain present, respond thoughtfully and navigate complex disputes with clarity and composure. Restorative justice principles remind us that at the heart of every conflict are human needs – such as respect, security and acknowledgment – that must be addressed for genuine resolution. By cultivating empathy and setting a constructive tone through our demeanor, we can foster a more collaborative and solution-oriented legal environment.

We encourage our fellow attorneys to explore and adopt these strategies within their ADR practices. Developing emotional intelligence and practicing mindful

communication can transform the way we approach conflict, enabling us to advocate more effectively while preserving relationships and promoting lasting resolutions. By integrating these principles into our professional lives, we can ensure that our legal practices remain dynamic, compassionate and responsive to the evolving needs of our clients and the broader community. Together, we can lead by example, demonstrating how a more thoughtful, human-centered approach to dispute resolution can create a stronger, more empathetic legal system.

ABOUT THE AUTHORS

Zana L. Williams is an attorney, advocate and the founder/CEO of Mindful Resolutions, delivering communication training through high-stakes negotiation, mindfulness and restorative justice. She has more than 18 years of experience in legal, youth-based and high-conflict roles and certifications in managing aggressive behaviors, nonviolent communication and trust-based relational intervention. Ms. Williams was named a U.S. Embassy keynote in Africa; her programs – from classrooms to boardrooms – reduce tensions, improve relationships and enhance productivity.

Kathryn R. Wilson is a second-year J.D. candidate at the OCU School of Law and an intern at Mindful Resolutions. She holds an M.S. and B.S. in sociology. Ms. Wilson is a licensed legal intern at the Oklahoma County District Attorney's Office: Juvenile Bureau, a distinguished member of the *Oklahoma City University Law Review* and the researcher and writer for the Philip C. Jessup International Law Moot Court Competition team.

ENDNOTES

1. Stephen J. Ware, *Principles of Alternative Dispute Resolution*, 6-8, 4th ed, (2023).
2. *Id.* at 7.
3. *Id.* at 7-8.
4. Benard S. Mayer, *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*, Jossey-Bass (2010).
5. Ware at 421.
6. 97 Model Rules of Professional Conduct 1.4 (American Bar Association, 2024); Okla. Stat. tit. 5A, app 3-A R. 1.4 (b); *See also* Ware at 421 (adding that [to] identify their clients' interests, lawyers should learn to interview their clients in a way that makes the client comfortable telling the lawyer the whole truth and nothing but the truth. And forthright communication must go in the other direction, too. The Model Rules of Professional Conduct state that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").
7. *See* Ware at 15 (generally, "a lawyer may, for example, believe that a particular process of dispute resolution is generally very costly and low in quality. But that lawyer may have a professional obligation to recommend that process if it appears to be in the client's interests.").
8. Ware at 421-22.
9. *See* Ware at 422-23 (explaining that "[t]o avoid falling into the trap of letting your bottom line become your reference point, be aware of your absolute limits, but do not focus on them. Instead, work energetically on formulating your goals – and let your bottom line take care of itself. Orient firmly toward your goal in the planning and initial stages of negotiation, then gradually reorient toward a bottom line as that becomes necessary to close the deal. In other words, reach for the stars while keeping your feet firmly on the ground.").
10. *Id.*
11. *Id.* at 13-4.
12. *Id.*
13. *Id.*
14. *Id.* at 13.
15. *Id.* at 14.
16. Leonard L. Riskin, "Mindfulness: Foundational Training for Dispute Resolution," 54 *J. Legal Education*, 79, 83 (2004).
17. *See id.* (explaining that "[t]he meditation practice begins with developing concentration, usually by focusing on the breath. Next the meditator directs his attention to bodily sensations, emotions, and thoughts, then works toward 'bare attention,' a nonjudgmental moment-to-moment awareness of bodily sensations, sounds, thoughts, and emotions as they arise and fall out of consciousness. Mindfulness meditation (also known as insight meditation and vipassana meditation) both requires and produces a measure of equanimity, which reinforces the ability to fix attention where we want it to be.").
18. *See id.* at 80 (explaining that "[m]indlessness impairs our work as practitioners of dispute resolution in several ways. For example, it could mean that a mediator or negotiator is not very 'present' with the other participants or with himself, i.e., not fully aware of what is going on. This diminishes the professional's ability to gather information and to listen to, and understand, others and himself, and even to achieve satisfaction from his work. The second problem is that, in the grip of mindlessness, we sometimes rely on old habits and assumptions, rather than deciding what behavior is most suitable in the precise circumstances we are encountering.").
19. *Id.*
20. *See* Leonard L. Riskin and Rachel Wohl, "Mindfulness in the Heat of Conflict: Taking STOCK," Vol. 20 *Harvard Negotiation Law Review*, 121, 123 (2015) (Riskin and Wohl explain that even those skilled in using conflict management tools may fail to apply them effectively due to deficits in awareness, referred to as the "Six Obstacles": overly self-centered perspectives, strong negative emotions, habitual reactions, emotional sensitivity (excessive or insufficient), lack of social skills and inadequate focus.).
21. *Supra* note 18.
22. *See* Riskin at 88 ("Exercises on listening (active or not) often form important parts of such [education and training programs that deal with mindfulness and negotiation or mediation]. Students, already in a reasonably mindful state, are asked to engage in activities in which their ability to listen is challenged by emotional or other distractions, and they are asked to be aware of these distractions. The programs also include exercises on negotiation that encourage the students to notice and examine the assumptions about negotiation that they hold and implement. Similarly, in mediation training, exercises are intended to examine assumptions, strategies, and techniques, at many levels of the decision-making process.").
23. Liza Varvogli and Christina Darviri, "Stress Management Techniques: Evidence-Based Procedures That Reduce Stress and Promote Health," Vol. 5 *Health Science Journal*, 74, 74-89 (2011).
24. *Id.*
25. *See* Cheryl M. Graves, Donyelle L. Gray and Ora Schub, "Restorative Justice: Making the Case for Restorative Justice," Vol. 39 *Clearinghouse Review Journal of Poverty Law and Policy*. 219, 220 (July-August 2005). (Restorative justice models draw from centuries-old traditions of Indigenous cultures, including Native American, African and Maori practices. For instance, the Navajo tradition of peacemaking involves victims, offenders and their families or clans in a communal process to "talk things out in a good way" and agree on practical solutions. Similarly, the Maori-inspired family group conference emphasizes the participation of children and families in resolving disputes, fostering accountability and addressing victims' needs for healing.).
26. *Id.*; *See also* John Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," Vol. 25 *Crime & Justice,* 1, 55-65 (1999), www.jstor.org/stable/1147608. (Adding that "there are increasingly solid empirical grounds for suspecting that we can often reduce crime by replacing narrow, formal, and strongly punitive responsibility with broad, informal, weak sanctions – by making the many dialogically responsible instead of the few criminally responsible. By dialogically responsible I mean responsible for participating in a dialogue, listening, being open to accountability for failings and to suggestions for remedying those failing.").
27. Graves, Gray and Schub at 223.
28. *Supra* note 25.
29. *Id.*
30. *Supra* note 14.

Effectively Mediating Construction Disputes

By Marvin Laws

IT IS UNDERSTANDABLE WHY HOMEOWNERS building a new home would be upset when things don't go according to plan. Likely the most significant financial risk most people will experience in their lifetimes, it is a very stressful time for prospective homeowners regardless of how smoothly the work progresses. But it is not uncommon for issues to arise that extend the time of performance and increase construction costs. This increases stress and can continue to grow the longer it takes to resolve issues and complete the work. The same is true of any property owner, public or private, residential or commercial – it is their property that is being improved, usually at great expense. Owners are entitled to competency, fairness and professionalism when dealing with designers and contractors hired to improve their property. They are the ones paying for the services and who will use the property long after the designers and contractors have left the picture. This is, in part, why property owners can be very demanding and sometimes difficult to work with, even when most or all the work is routine.

On the flip side, designers and contractors who undertake the performance of their obligations in good faith and, ultimately, fulfill their contractual duties in accordance with the terms of their agreements and/or industry standards should be paid for their services. A disagreement resulting in payments being stopped can cause an extraordinary amount of stress on contractors and designers who have employees, subcontractors and others to pay. Sometimes, a disagreement can progress to a claim situation, where a contractor or subcontractor must act according to their contract to preserve claims for increased costs and time extensions. Contractors or subs also may be required by statute to perfect a lien or a bond claim, which further increases an already stressful situation.

If unresolved, such disputes can end up in litigation or arbitration (or both), sometimes involving many parties who are affected, as noted below. Unsurprisingly, the parties' stress will continue to grow the longer it takes and the more money that is spent during this stage of the process. Lawyers must navigate these complexities when figuring out what, in fact, is at issue. This is no small task, as there is always an underlying complexity that can increase distractions, consternation and uncertainty. For example, a dispute over a simple, one-room add-on to a residence may involve only two parties (the owner and the contractor), but the work itself might require materials from multiple vendors. If the work involves components that require the services of licensed trades – such as electricians, plumbers or surveyors – even more parties are necessary for the completion of the overall work and may be implicated in a potential dispute. Commercial or public projects add further layers of involvement in the

form of lenders, sureties, architects, engineers, specialty trades and many others. Where negligence claims are at issue, insurers, agents, adjusters and experts are also often part of the process.

As noted above, lawyers and their clients must also contend with multiple legal hurdles, which can increase stress. A common example occurs when a party is required by statute to perfect a claim, but work is not complete, and/or the contractual close-out process has not been finalized.[1] Indeed, the general conditions to the parties' contract may contemplate such circumstances and instruct the parties to proceed with perfecting any such claims while going through the contractual claims resolution process.[2]

But even when handled as amicably as possible, recording a lien or perfecting a bond claim can, and often does, exacerbate the parties' negative feelings and make resolution more difficult, even though it has little to do with the underlying dispute. In other words, a lien may upset a project owner, or a bond claim may upset a general contractor, but the real issue is whether the money claimed in the lien or bond claim is owed. That does not change,

even if there are perfection problems (*e.g.*, the lien was recorded late, notice issues with the bond claim, etc.). Yet, all too often, parties will spend considerable time arguing over procedural matters, sometimes at great cost. So while it might be necessary to file a dispositive motion on a claim or issue, clients often only see the cost rather than the benefit of using such pretrial tools, especially if they are not granted. Costs increase stress, which makes it harder for the parties to see a path to resolution that does not involve going to court or arbitration.

While a construction dispute might be complex or involve parties who are very upset, attorneys can best serve their clients by quickly separating distractions from the important issues so that informed decisions will be made on whether to settle the case or proceed to a hearing. This article aims to help that goal by providing a few best practices for mediation preparation. Incidentally, while this article is focused on construction disputes, the core principles apply in mediations of most kinds of cases.

SETTING THE TABLE

There are several considerations parties must first explore before even agreeing to mediate. Which mediator will be used? Will the mediation be conducted in person, remotely or a hybrid of the two? Is a pre-mediation demand a good idea, or should they wait until mediation? Is there any discovery to be conducted or a dispositive motion to be filed that would help the settlement process, or would those activities be counterproductive? Have all the parties been correctly named and/or joined in the proceedings? There are so many things to consider, but it all really comes down to one thing: *Are the parties truly ready to try and resolve their dispute?*

Avoid Premature Mediations

One of the biggest reasons mediations fail involves one or more of the parties having a one-sided mindset that they are unable or unwilling to overcome. This is not to be confused with stubborn clients who may have an initial mindset to settle on only their own terms but, nevertheless, see the benefit of early resolution. Rather, if a client sees no potential benefit to the mediation process or perceives it as a waste of time – despite your efforts to educate them otherwise – then conducting a mediation would likely fail. This can happen sometimes when mediation is ordered by a court and/or if it is a condition precedent in the parties' agreement. However, courts and arbitrators expect the parties to engage in serious efforts to settle the dispute, or they won't order mediation. Likewise, the American Institute of Architects, ConsensusDocs and the Engineers Joint Contract Documents Committee would not include mediation in their form contracts if they didn't expect industry participants to seriously attempt resolving disputes before going through a protracted litigation or arbitration process. In short, clients must understand that by the time of mediation, they may have to make concessions if a resolution is to be obtained.

This is why counsel's role in mediation cannot be overstated. While they may not agree with everything their opponents or the mediator says and certainly are not expected to capitulate whenever pressure is applied, counsel should, nevertheless, have respect for the process and communicate that respect to the client. Showing such respect often helps clients decide to give mediation a real chance. On the other hand, if counsel approaches mediation with a "check-the-box" mentality or, sometimes, if they are inexperienced or struggling with workload or other personal issues, developing realistic expectations with the client can be very challenging, to say the least. Worse, the potential for the client to see only one outcome – that of total victory – can be greatly increased when expectations have not been properly set. Still, more premature mediations usually don't happen because counsel could have done a better job educating their clients. Rather, failed settlement efforts often involve clients who ignore the advice of their attorneys or who are not yet ready to accept uncomfortable information about their position by the time of mediation.

Select a Mediator Who Can Move the Parties

Not all mediators are the same. Some are facilitators who offer very little in the way of pushing the parties and virtually no assessment of the facts or the law of the case. In cases where there is very little in the dispute or the parties are merely looking to close a small gap, a good facilitator can often achieve a good result in a short amount of time. On the other end of the spectrum are mediators who are more evaluative, unafraid to get into the weeds with a party or counsel.

In construction cases, a mixture of facilitative and evaluative techniques tends to work better than relying too heavily on one or the other. While there are indeed

many strong personalities involved in construction and/or several of the disputes turn on technical issues, which often demand a more evaluative approach, there are just as many construction disputes that the parties treat in a more transactional sense – such as where liability is not disputed or where the parties have a desire to continue doing business with one another after mediation. In such cases, a good facilitator can guide the parties through the process expeditiously rather than getting into the weeds of the dispute.

However, as noted above, emotions can run high depending on the level of risk undertaken by the respective parties and their level of experience with the construction process. In short, any construction project has the potential for increased stress, anxiety and hostility, especially the longer a project takes or a dispute goes unresolved. In such highly stressful situations, an evaluative technique is often better for assuaging parties and tamping down negative emotions, but once the parties put those things behind them, the negotiation should become more transactional.

In Person, Remote or Hybrid Mediation?

Since the 2020 pandemic, virtual mediations have become routine. There are several circumstances where virtual mediation is preferred to in person, such as where there are few, if any, emotions involved or where liability is not disputed. Remote mediation is also handy for parties, adjusters or in-house counsel from other jurisdictions who might not otherwise go to mediation due to having to travel a great distance. Finally, a remote or hybrid setting is critical for mediations involving 10 or more parties. This is primarily because of the logistics of the mediator moving from room to room, which is instantaneous in a remote setting but takes longer when handled in person.

Remote mediations should be discouraged, though, when one or more of the parties have unreasonable expectations, a client is very emotional or one or more of the parties is not focused on either the dispute or the settlement process. It is far easier to switch off a computer than it is to leave a meeting being attended in person. It is also easier in a remote setting for parties (and counsel) to conduct other business, travel or engage in social activities, which can be distracting during mediation and lower the chances of success. If a human touch is necessary, that can't always be accomplished virtually.

PREPARING FOR MEDIATION

Assemble the Core Documents

The contract. At the heart of almost every construction dispute will be at least one agreement, and it should be the first document in the materials assembled for mediation, including any general conditions, special conditions or other terms and conditions incorporated by reference. If the contract was not in writing (yes, that still happens), then documents establishing the terms of the oral agreement should be included in your mediation materials, such as proposals, bids, estimates and correspondence.

Incidentally, there are few good reasons, if any, for not sharing your client's contract with the mediator (or other parties). If the concern is that the contract does not work well for your client, that concern needs to be at the front and openly discussed with at least the mediator. Besides helping the mediator build rapport with the client, openly discussing the terms of the

parties' agreement(s) – the good, the bad and the ugly – will help clients be better informed and able to make the right decision when the time comes.

Also, any documents changing the contract terms – such as change orders, modifications or other similar instruments – should be gathered for mediation. If change orders are not in dispute or if the documents are so voluminous that it would dramatically increase the time and cost of mediation if produced, summaries should be provided. As discussed below, having a firm handle on the contract price, the revised contract price (after agreed-to changes) and what is in dispute is critical to maximizing any recovery or defense, and the contract documents are usually the first of the primary tools to help accomplish your clients' goals.

Other contract documents. Plans and specifications are always part of the parties' contract when they exist, but they are not always necessary to the mediation process. There could literally be hundreds of drawings and/or hundreds of pages of specifications, but none of that will matter if the dispute has nothing to do with the installation of the work (such as a payment dispute) or only involves a particular item of work. In cases where some discussion over the technical aspects of the work is required, gathering only the drawings or specifications at issue is recommended. Producing "everything" is usually not necessary or productive. *Note:* When assembling select drawings or specifications at issue, care should be taken to include any general or special notes or provisions that may apply but are found elsewhere in the plans and specs.

Correspondence. The next biggest piece of information helpful in mediation is the written communications between the parties. This includes letters, memoranda, emails, text messages and virtually anything in writing between the parties, with third persons or internal communications. Like plans and specifications, there is a potential for thousands of pages of communications to exist, and a majority of the same will not be relevant to any significant issue. Paring down communications to only those that are relevant and have the potential to help the settlement process is essential. At a minimum, correspondence about disputes, claim notices, default or termination notices, etc., should always be assembled as part of the mediation process.

Having said that, there are people who put very little, if anything, in writing when conducting their business affairs. They often default to personal discussions – on-site, remotely or over the telephone – to discuss changes or problems encountered during the performance of the work. In such cases, counsel should do their best to extract from their clients the dates and/or timeframes and content of any relevant oral discussions or meetings. Also, there may be other written documents that memorialize the parties' discussions and conduct, as noted below.

Other documentation. Different kinds of disputes require different kinds of documentation. For example, a claim involving dirt work quantities may require surveys, delivery tickets or haul logs, whereas a structural issue might require an engineering analysis. Claims involving flooring, roofing, cladding or other integrated building systems might require the manufacturer's literature or industry guidelines. Oftentimes, parties will be eager to get their attorneys such information, which is very helpful, but again, having the contract documents and communications between the parties concerning the issues is just as vital.

The next biggest piece of information helpful in mediation is the written communications between the parties. This includes letters, memoranda, emails, text messages and virtually anything in writing between the parties, with third persons or internal communications.

Several other items are commonly used in construction disputes to substantiate or defend construction claims, such as:

- Cost estimates, bids, proposals and take-offs
- Daily logs or other progress reports, notes, photos and videos
- Requests for information
- Quality control and testing reports
- Quality assurance reports
- Certified payroll or other time records
- Vendor estimates and invoices
- Rental agreements and invoices
- Delivery tickets and haul logs
- Meeting minutes and summaries
- Project schedules and weather data

Again, this is not meant to be all-inclusive. There could be many more documents that are relevant to the dispute, and if so, they should be part of your mediation materials. While your practice might be to ask your client for everything – their entire project file – just make sure that by the time you prepare for mediation, you have pared down the information to as few documents as possible. Besides risking confusion, too much information can needlessly increase the costs of mediation.

Preparing a Timeline

Whether it is contained within the mediation statement or produced as a stand-alone document, a good timeline is invaluable to the settlement process. Once the core documents are assembled, they should be placed in chronological order to build the timeline. If there were in-person meetings, remote conferences or telephone discussions for which no written record was made, the dates of such events and summaries of the same should, nevertheless, be part of your timeline.

For attorneys, taking the time to organize project documents and using them to prepare a timeline will help reinforce the key events and allow for better representation at mediation. It will also help pare down the core information to only those things that have a significant bearing on negotiations. For mediators, having a snapshot of the timeframe and key events will help put the focus on what matters and what does not. This is especially true if, after the best efforts of counsel, there are still numerous critical documents to be included or relied upon in mediation. For example, rather than producing hundreds of documents for the mediator, a timeline summarizing the same can be provided, after which the mediator can request any specific items included in the timeline. This should help reduce the time and cost of mediation.

From a defensive standpoint, timelines can be used to communicate to the other party problems with their case. For example, a clear timeline showing the communications before, during and after the submission of a bond claim or recording a lien can help illustrate the failure to perfect such claims. The failure to follow claims or disputes procedures, issues with statutes of limitations or other similar temporal problems also can be clearly demonstrated by showing the events in a short, digestible timeline.

Summarizing Damages

As with the underlying contract, there are few good reasons, if any, *not* to provide a clear and concise summary of damages during the mediation process. Sometimes, your client's damages are a moving target, which can be very frustrating to the party wanting to write a check. Worse, a moving target may give the other party an excuse to offer very little, if anything, in settlement. This can further exacerbate the parties' hard feelings if they think the other side is "playing games," which can frustrate negotiations. Nailing down your client's claims well in advance of mediation should help reduce such issues and make the path to resolution easier. Naturally, that means involving your client early in the process and developing reasonable expectations.

There should rarely be disputes over the original contract amount, approved changes orders or payments made. Nevertheless, it is always good to begin a discussion of claims and/or defenses with a statement of the current contract amount (and time if timing is an issue). A simple contract accounting summary might look something like this:

Contract Price:
Original Contract Amount
$1,450,000
Change Order 1 (approved)
$30,000
Change Order 2 (approved)
$15,000
Revised Contract Amount
$1,495,000
Payments ($1,300,000)
Balance Before Addressing Claims
$195,000

Contract Time:
Contract Days: 245
Notice to Proceed: March 30, 2024
Original Completion Date:
Nov. 30, 2024
Days Granted in COs to date: 15
Revised Completion Date:
Dec. 15, 2024

Claims should then be separately identified, with a short description and proposed cost/time impact for each issue. Backup documentation should be included to support the actual or estimated costs for each issue (see above for examples). This includes both claims of a contractor or subcontractor for extra work, as well as claims by an owner to correct deficiencies, repair damaged property, etc., if any. Likewise, claims for additional time should be backed up by schedules, weather data and other documents demonstrating actual or potential time impacts. If attorneys' fees, costs and interest are available under the contract or applicable law, they should be included in the summary of damages.

Of course, what the client desires may not be allowed under the law or the parties' agreement. Damages are generally available in an amount needed to place a plaintiff in as good of a position as they would have been had the contract not been breached.[3] So if a homeowner spends $250,000 on the construction of a new home but later sues the contractor for $1 million to remedy alleged construction deficiencies, it is very likely that such damages would be held unreasonable and, therefore, not recoverable. In the context of mediation, starting negotiations in such a manner could be a nonstarter for the contractor/seller of the home.

There could be other limitations contained within the contract. For example, your client may contend they are owed money due to job prolongation, but there is a "no damage for delay" provision disallowing such damages. There could be an exculpation clause disallowing claims for unforeseen site conditions, a consequential damages waiver or a pay-when (or if) -paid provision in the agreement. There could also be legal hurdles to overcome, such as problems with the perfection of a lien or bond claim, statute of limitations or statute of repose. In the case of property damage, the law might limit the owner's damages to either the cost of repair or diminution in value if the cost of repair is impracticable.[4]

Including a claim that is flatly not viable can sometimes have a chilling effect on negotiations. For this and other reasons, deciding what to include in a demand should be heavily scrutinized, and reasonable expectations should be developed early. Counsel should carefully explain to their client any shortcomings when determining the list of damages versus what a negotiated compromise might look like in mediation.

Sharing Information

As paid pugilists, the job of a litigator often does not contemplate freely sharing information with opposing parties unless ordered to do so by a judge or arbitrator, statute or court rule. However, in the context of mediation, there usually are more benefits to sharing than there are to withholding information.

Providing a target. As noted above, providing clear and concise damage calculations is imperative to success at mediation. Parties who understand how much is being claimed and how the amount was calculated will be in a far better position to settle than if damages are vague. Even if they do not agree with the claim, the party expected to pay will be in a much better position to offer something reasonable if they understand what is being claimed and how it was calculated. Indeed, for the party seeking payment, arriving at a clear settlement demand is just as important as it is for the party expected to pay. Besides potentially maximizing a recovery, arriving at an opening demand is a great opportunity for counsel to work through all the issues with their client's claims and set reasonable expectations for when negotiations begin in earnest. A good damage model should also convey to opposing parties the strengths of your client's claims and provide a framework for what a result at trial or arbitration might look like.

Sharing backup. Unless they are voluminous, it is usually better to share with the other parties the documents gathered and the timeline prepared for mediation. When confronted with specifics backed up by contemporaneous project records, the parties' discussion should become far more focused with fewer distractions. Besides focusing the parties on what is at issue, sharing can also have other beneficial effects, such as demonstrating a willingness to work toward a fair compromise and enabling opposing parties and the mediator to fully understand your client's position. But again, caution must always be used to avoid providing too much information, which can lead to confusion and/or needlessly increase mediation costs.

Withholding information. Sometimes, parties or their counsel may have information that could cause problems with negotiations if shared. For example, parties are sometimes concerned with another's potential for hiding assets, destroying evidence or other similar nefarious conduct. Sometimes, a client may be so angry with the other side that they believe they have been defrauded or cheated, even if the dispute is a legitimate one under the parties' contract and there is no evidence of malfeasance. Raising such issues with the other side can be counterproductive, as it could exacerbate hard feelings and push the parties further into their corners, especially if allegations are unsupported. Similarly, including an unfounded or otherwise problematic claim in a damage summary has the potential to cause an opponent to not treat other viable claims seriously.

If the goal of disclosing a fact or raising a problematic claim is to embarrass, intimidate or otherwise unsettle your opponent, then disclosure to other parties is discouraged. What good will come from trying to embarrass your opponent? However, as noted herein, it may take your client some time to come to grips with hard truths about their case. For example, a project owner who has sued their general contractor for breach of contract and fraud may truly believe they were intentionally deceived by the contractor. However, if you determine there is no fraud based on your review of the evidence, should you "drop the claim" for mediation purposes? Can you even do so if your client insists on including such allegations in a mediation statement? This can be a dicey situation,

especially if your client still feels cheated, despite your evaluation. One way around this conundrum is to share your mediation statement with only the mediator and not your opponent. This allows the client to vent as necessary while, at the same time, avoiding raising any issues with the other side, which could derail negotiations.

The downside to not sharing mediation materials with the other party(ies) is that you are removing a golden opportunity to advocate for your client directly to their opponent(s) without the filter of the mediator. If necessary, two mediation statements can be used: one to share with opposing counsel and the mediator and another for the mediator's eyes only. Regardless, whether to include a problematic allegation or claim and/or when to pull such a claim off the table is up to counsel and their client on a case-by-case basis. Indeed, sometimes, clients will not be emotionally ready to remove a claim until they are well into the process (and sometimes, they never get there).

Client Preparation

By the time a mediation statement is prepared, along with the timeline, documents and damage summary, counsel should have met and/or discussed the issues with their client at least once, if not several times, depending on the complexity of the issues. Hard issues – like an agreement that excludes attorneys' fees from being recoverable by a prevailing party, exculpation clauses or other limitations like some of those noted earlier – should have been explained thoroughly. Once the mediation statement is prepared, you should share and discuss it with your client, again confirming they understand the positions being taken as well as what the other parties are expected to argue in opposition, not to mention the risks in moving forward if a compromise is not reached at mediation.

Most mediators, especially those who place an emphasis on a more evaluative process, will raise many or all the problematic issues directly with your client. Clients who have been adequately prepared will be less likely to

be surprised or embarrassed by such "bad news," which should help with the process. After all, prepared clients will be more inclined to make a reasoned, informed decision rather than one based on emotion. Having said that, as suggested throughout this article, sometimes it is not possible for attorneys to effectively communicate with their clients through no fault of their own. In such cases, counsel should communicate early with the mediator about such problematic situations.

Mediator Preparation

If time permits, counsel should discuss the case with the mediator prior to mediation. Besides reinforcing the key points of your client's position, pre-mediation discussions help narrow the issues and even remove some of the unhelpful ones, as noted above. Pre-mediation discussions with the mediator are also a good way to check yourself to ensure that zealous advocacy has not gotten in the way of maximizing the client's position in negotiations.

CONCLUSION

It is always a good idea to ensure that you and your clients are comfortable and as relaxed as possible on the day of mediation. After all, while more informal than most legal settings, mediation is still a stressful time, and having a comfortable space to discuss the issues will help keep everyone focused on resolution. Also, it is highly recommended that the parties sign a term sheet or other instrument at the end of a successful mediation summarizing the terms of their agreement.

Finally, the key to a successful mediation, whether it is a construction dispute or otherwise, is early preparation. If reasonable expectations have been set with clients, and counsel and the mediator are otherwise prepared, then the negotiations should go as smoothly as possible.

ABOUT THE AUTHOR

Marvin Laws spent 17 years practicing before starting his current role: operating Oklahoma's only ADR practice dedicated to construction law disputes. Mr. Laws mediates more than 40 cases yearly with two to 18 parties in person, remotely or in a hybrid setting. Every year, he also arbitrates two to four cases.

ENDNOTES

1. *See, e.g.,* Title 42 Oklahoma Statutes §§141, 142, 142.6, 143 and 172 (Oklahoma Statutes providing for notice, recording and suit filing requirements for mechanics and materialmen's liens on private property), and 61 O.S. §§1 and 2 and 40 U.S.C.A. §§3131 and 3133 (Oklahoma and federal payment bond statutes for public projects).

2. *See, e.g.,* American Institute of Architects (AIA) Document A201-2017 General Conditions of the Contract for Construction §15.2.8.

3. *See Britton v. Groom*, 1962 OK 185, 373 P.2d 1012, 1015-16, and Title 23 Oklahoma Statutes. §21. Damages in all cases must be reasonable. *See* 23 O.S. §97. "Direct damages refer to those which the party lost from the contract itself – in other words, the benefit of the bargain – while consequential damages refer to economic harm beyond the immediate scope of the contract." *Penncro Assocs., Inc. v. Sprint Spectrum, L.P.*, 499 F.3d 1151, 1156 (10th Cir. 2007).

4. *See, e.g.,* 15 Am. Jur., Damages, Sec. 110, and 25 C.J.S., Damages, §84, and *Schneberger v. Apache Corp.*, 1994 OK 117, ¶¶1112, 890 P.2d 847 (Oklahoma law limits the amount of recovery for repair and restoration costs so that damages for the cost of repairs may never exceed the diminution in value of the property).

Resolve Your Case in Months – Not Years

Historically, *arbitration* has been a dirty word for trial lawyers,
but it can be a great fit for your case if you choose it for the right reasons.

Choose the best arbitrator for your case.

Significantly reduce litigation costs.

Enjoy an efficient and expedited process.

The result is final.

If you're considering arbitrating your case,
call us at **918-592-1144** or visit **www.AccordADR.com.**

Ted Sherwood
Eric Eissenstat
Joe Farris
Dan Folluo
Meredith Lindaman
Chad Moody
M. David Riggs

ACCORD
MEDIATION | ARBITRATION

15 W. 6th St., Suite 2800, Tulsa, OK 74119 | 918-592-1144

Hugh Robert
David Russell
Robert Sartin
Bill Threlkeld
Christian Tolen
Danny Williams

View calendars & book online at AccordADR.com

Resolving Disputes That Arise in Family Law Matters: Looking at Alternatives From a Judicial Perspective

By Judge Jequita H. Napoli

"AN OUNCE OF MEDIATION IS WORTH A POUND OF ARBITRATION and a ton of litigation!" These words were written by Joseph Grynbaum, unsurprisingly, a mediator.

Mr. Grynbaum's perspective arose following a long career as a professional licensed mechanical engineer, a field that led to substantial exposure to litigation, arbitration and mediation, where he now works. This topic isn't about complex civil engineering but family law, where a mediated agreement can serve the interests of your client much better than litigation.

The judicial system, and specifically trials in the courtroom, adversarial as they are by nature, are appropriate forums to achieve resolution of allegations of crime, personal injury and other civil matters. It is the family law cases – specifically guardianships, dissolutions of marriage, paternity, child custody, visitation cases and other matters involving intimate partners or family members – that seem out of place in the traditional courtroom trial setting. Even though we have courtrooms that look and feel very different depending on the type of docket being conducted, not every type of case needs to be decided by a judge in a courtroom. Perhaps we have all been watching too many criminal court TV cases, but did it ever seem right to call one parent a "defendant" in a custody case?

The Oklahoma Legislature did support making a change in the party designation, but it was as recent as Nov. 1, 2002,[1] when the change became effective in divorce and annulment actions, and the parties formerly named "plaintiff" and "defendant" became "petitioner" and "respondent." Perhaps a bit kinder in nomenclature, but one is still suing the other for custody, child support, property division and debt apportionment and vice versa. Even in a guardianship action, a parent may be suing their adult child seeking guardianship of a grandchild, alleging that it is necessary or convenient,[2] or an adult child may be suing their parent seeking guardianship, alleging that the parent is incapacitated or partially incapacitated.[3] There are significant, highly emotional issues in family law matters that need processes to de-escalate tension rather than subject the parties to the escalation that trials can bring about.

Mediation can be that de-escalation tool. This article will discuss whether mediation should be considered as an expected way to resolve family law matters rather than a step in the pathway toward trial.

WHEN SHOULD MEDIATION OCCUR?

Settlement of a case can only be accomplished when you are fully aware of your client's goals in the resolution of the issues and you

have an accurate picture of the facts and issues involved in the case. Therefore, discovery must be complete. When you know what a fair and equitable resolution of all the issues would be, you can evaluate the parameters of what might be the strengths and weaknesses of your client's position. That enables you to form a settlement strategy: from the "optimum result" ranging to "a result my client can live with." This sort of analysis can only come about when you know your case. When you have been efficient, issued discovery in a timely manner and have discovery responses, you are ready to schedule mediation.

HOW IS MEDIATION SCHEDULED?

Mediation can be scheduled by agreement of the parties directly with a mediator. Of course, that does require agreement of the parties, and when agreed, mediation can be scheduled as soon as discovery is completed. Absent agreement, a request can be made of the court to order mediation, but you may be in a county where it is common practice for the court to order mediation as a routine part of a scheduling order.

WHO SERVES AS MEDIATOR?

Parties are generally able to choose a mediator by agreement, or perhaps your court would make a selection from suggestions of counsel if you do not reach an agreement. The cost apportionment will be determined by the court. When the expense of a private mediator is cost prohibitive, the Oklahoma Supreme Court Early Settlement Mediation program is available. This program operates under the Oklahoma Dispute Mediation Act,[4] which affords confidentiality of proceedings and offers statewide (including virtual) coverage. Offices are located in Norman, Tahlequah, Ada, Stillwater, Bartlesville, Enid, Oklahoma City, Ardmore, McAlester, Lawton, Tulsa and El Reno.

Mediation affords parties and their counsel the opportunity to hear each other in a way that doesn't happen in the course of a case in any other way.

WHY MEDIATION?

Mediation affords parties and their counsel the opportunity to hear each other in a way that doesn't happen in the course of a case in any other way. Neither a deposition nor a trial actually affords parties time to sit and listen to each other in the way sitting in a conference room does, listening to the questions and answers between the opposing party and the mediator. The sharing of views allows for an opportunity not merely to compromise but to explore ways in which each party can gain a resolution that is satisfactory.

When only one party is represented by counsel, mediation is a particularly useful tool for the settlement of a case. When the opposing party is unrepresented, you have very limited opportunities to speak about the issues in the case. Assuming you have discovery accomplished or are otherwise sufficiently prepared to engage in settlement negotiations, having a neutral third-party mediator who is directing questions of both parties regarding their goals in settlement and itemizing their requests for settlement, you, as the attorney for the one party represented, do have the opportunity to engage in settlement negotiations, something that is not available in any other way.

The certainty of the result is a significant factor in favor of mediation over trial. There is always a great deal of uncertainty about the outcome of litigation of the issues. Testimony never sounds quite like you expect, or witnesses may not appear – or if they appear, they may not testify as expected. Your case may sound excellent on direct examination but not as clear-cut under cross-examination. All of that uncertainty is eliminated in mediation. The decision is solely in the hands of the parties, those persons who know the facts and nuances of the issues the very best. Through mediation, they maintain control of their lives and their futures, and though they may not have accomplished everything they would like, they did come

away with something they can say, "I can live with this result."

In child custody matters and guardianship cases, there will be ongoing matters of disagreement. It is an excellent idea for parties to learn how to solve problems among themselves rather than needing to have a judge enter orders on every dispute. This seems pretty basic, but as time goes on, other matters will arise that the parties may have disagreements about. You will be doing your client a great service by teaching them skills through mediation: communication, listening and problem-solving. Those skills will serve your client well and, even more, serve the best interests of their child or children.

COVER ALL THE BASES

Remember to be complete. For example, if parties want to have a holiday visitation schedule that they will agree to yearly, also propose a standard schedule that will control in the event the parties fail to agree on a schedule, and that will be the default schedule for visitation if an agreement is not reached. If there is a request to deviate from guidelines for child support, attach an accurate child support guideline schedule to show the parties' incomes, the resulting calculation and the parties' agreed deviation. If you are dividing a pension plan, prepare the appropriate documentation. The goal is to not be back in court, but in the event your client is back in court, have an order that does, in fact, cover all the bases. Would you be surprised that an agreed decree provided for the division of the equity in the marital residence, then three years later, the issue for mediation is how the equity is determined? Do you look at the value three years ago or today? When a decree is silent on essential terms, the issue is more complex than it was originally.

CONCLUSION

Is every case you take to mediation going to be settled? Probably not. I would imagine, though, that if you take the attitude that mediation is expected to result in a conclusion to the case, many, many of your cases will, in fact, settle. You will save your client time, money and angst. Then, for those that have not settled, almost always, you will have a significantly greater knowledge of both sides of the case, and the information you take with you will lead to further discussions, many of which are likely to lead to settlement. Remember, you can drive how efficiently your case moves forward. Families are in limbo while cases are pending, and you can bring peace to your client through the resolution of the issues. Abraham Lincoln discussed lawyers as peacemakers and described them as good men. Perhaps he lived at a time when he couldn't envision that women would also be lawyers and good peacemakers. In any event, the topic he was discussing was compromise and the benefits of settlement. I hope you agree with him that there are, indeed, many benefits of bringing your skills as a lawyer and a peacemaker to family law conflicts through mediation.

ABOUT THE AUTHOR

Judge Jequita H. Napoli is an active retired special judge in Cleveland County. She served as a board member and chair of the Oklahoma Board of Bar Examiners and the National Conference of Bar Examiners. Judge Napoli has spent six years each with the ABA Section of Legal Education Council and its Accreditation Committee.

ENDNOTES

1. 43 O.S. §102.
2. 30 O.S. §30 O.S. 2-101.
3. 30 O.S. §30 O.S. 3-115.
4. 12 O.S. §1801 *et seq.*

Oklahoma's Agriculture Mediation Program: Specialized Statewide Farmer and Rancher Assistance

By Mike Mayberry

THE OKLAHOMA AGRICULTURE MEDIATION PROGRAM INC. (OAMP) has existed since 1987 to help Oklahoma farmers and ranchers with disputes and disruptive issues. Founded at a time when farmers and ranchers nationwide were experiencing the farm crisis of the 1980s, the OAMP not-for-profit corporation now serves all 77 counties in Oklahoma.

BACKGROUND

Some agricultural producers in the '80s were distressed to the point of killing themselves, often finding methods that did not trigger suicide exceptions in their life insurance policies. Stories circulated in Oklahoma and nationwide of agricultural producers "accidentally" having tractors roll over on them or trucks running into bridge abutments so that the life insurance policies could be used to pay off the farm or ranch debt and allow the families to continue their production efforts. These concerns were part of the impetus for legislative action that led to the OAMP.

Congress and the Oklahoma Legislature stepped up to help alleviate the farm crisis. Following state legislative efforts to offer relief to producers, Congress passed 7 CFR Part 785, which was intended to provide emotional relief and financial assistance. Out of these efforts, the OAMP became one of the first in the nation via Title 2 O.S. Section 2-30.

THE OAMP NOW

Back to the present, the OAMP offices are located in the Oklahoma Department of Agriculture, Food and Forestry building within the state Capitol complex. It operates as an Oklahoma nonprofit corporation, receiving funding from the U.S. Department of Agriculture. There are currently 44 officially recognized agriculture mediation programs in the United States, operating mostly in states you would imagine. States like California, Kansas, Nebraska and Florida are rather obvious, but there are also programs in New Jersey and Rhode Island, where there are hundreds of microfarms and orchards. One of the newest programs is located in Alaska.

Be sure to see the sidebar list of the types of mediations authorized by the CFR. While this list covers most mediation matters that come up in Oklahoma, the 2018 Farm Bill added an important expansion that includes matters determined by the secretary of agriculture as appropriate for mediation.

Mediation categories available for mediation by the OAMP include:

- Agricultural loans, including defaults and accelerations
- Wetlands determinations

- Compliance with farm programs
- Rural water loan programs
- Grazing on national forest system lands
- Pesticide-related disputes
- Lease issues, including land leases and equipment leases
- Family farm transitions
- Farmer-neighbor disputes
- Other issues as determined by the Oklahoma secretary of agriculture as appropriate for better serving the agricultural community and persons eligible for mediation

INITIATING A MEDIATION WITH THE OAMP

Typically, agricultural producers or their attorneys contact the OAMP by phone, mail, fax or via the website www.ok.gov/mediation, which provides an immediate contact form. OAMP staff respond quickly to gather necessary information from the contacting party and make contact with the other party,

if necessary. Contact the OAMP by phone at 405-521-3934 or 800-248-5465, by email at mediation@ag.ok.gov or online at www.ok.gov/mediation or www.oklahoma.gov/oamp.html.

When both parties have agreed to mediate, a date, time and place are determined, and the parties gather for the mediation meeting. The OAMP mediator ensures that the parties understand the process and participate in good faith, working toward any possible solutions that will resolve the dispute and, as always, are acceptable to all the participating parties.

Mediations typically last a few hours, but complex matters may require more than one meeting. Family farm transitions frequently require multiple meetings.

Remember: Mediations are confidential, and participation is voluntary. Parties are not charged for the mediations that qualify under the USDA grant program. They are scheduled in the most convenient place and at times convenient to the parties. At least one party must be conducting agriculture business or be located in Oklahoma.

The OAMP has a mediation success rate of 80% overall, and for those cases that do not result in an agreement, the parties' relationships are improved due to a better understanding of the issues.

CONCLUSION

The Oklahoma Agriculture Mediation Program has played an important role in supporting the state's agricultural community for decades. From its origins during the farm crisis of the 1980s to its continued evolution in addressing modern disputes, the OAMP exemplifies the power of mediation in fostering understanding, resolving conflicts and strengthening relationships. With its high success rate and strong commitment to serving Oklahoma farmers and ranchers, the OAMP remains a valuable resource for navigating the challenges inherent in agriculture. As the program continues to adapt to new demands, it ensures that Oklahoma's agricultural producers have the support needed to thrive in an ever-changing landscape. For more information or to seek assistance, the OAMP's dedicated team is just a call or a click away.

ABOUT THE AUTHOR

Mike Mayberry has served as executive director of the Oklahoma Agriculture Mediation Program since 2014 and was previously deputy court administrator for the Oklahoma Supreme Court Administrative Office of the Courts. He has been an OBA member since 1988.

200+ ADR SECTION MEMBERS CAN'T BE WRONG!

Do you have an interest in alternative dispute resolution, arbitration or mediation? Join the OBA Alternative Dispute Resolution Section today.

Benefits include learning about current topics involving dispute settlement and fellowship in and networking with ADR peers. Plus, considerable CLE is available at no cost to section members. Many ADR Section CLEs are presented in one-hour blocks online so that you can participate from anywhere!

Join now by calling the OBA Membership Department at 405-416-7000 or by visiting https://bit.ly/3EKWt5A.

Scan to join the OBA ADR Section

Early Settlement Mediation: Making Oklahoma a More Peaceful State

By Phil Johnson

"The Early Settlement Mediation program has been a tremendous help to the courts in Oklahoma, providing mediation services to parties in conflict and giving them an opportunity to resolve their disputes in a peaceable manner. The volunteer mediators are quite skilled, and they do a great job of guiding the disputing parties through the mediation process. In most cases, the mediators are successful in helping the parties reach a resolution to their disputes."

—Justice M. John Kane IV

The Alternative Dispute Resolution System, an Oklahoma Supreme Court Administrative Office of the Courts program, is recognized as having one of the top community-based, court-connected statewide conflict resolution programs in the nation. It was presented with the Golden Hammer Award from former U.S. Vice President Al Gore for making our communities and government more efficient.

Through 13 regional Early Settlement Mediation program centers, all 77 counties in Oklahoma have free mediation services available to all who wish to negotiate interpersonal matters. In fiscal year 2024, the Early Settlement Mediation program received 5,835 requests for mediation services and mediated over 4,100 cases, with an average resolution rate of over 70%.

In 1983, a group of legislators, including Sen. John McCune IV and Sen. Robert Henry, worked to get the Dispute Resolution Act, 12 O.S. 1801 *et seq.*, passed by the Oklahoma Legislature and signed into law by the governor. The act stated that mediation services be designed "to provide to all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive and expeditious." Many states across the country had passed similar legislation to provide an out-of-court opportunity for disputing parties to resolve their conflicts using a neutral mediator. In 1985, the Legislature authorized that $2 out of every civil case court filing would be used to fund the newly established program, in addition to a $5 fee from each party wanting to use the service on cases not filed in court (note that in 2016, the Legislature passed and the governor signed new legislation that increased the fee to $7 and did away with the $5 per-party fee for noncourt cases).

The Supreme Court of Oklahoma adopted the rules and procedures for the Dispute Resolution Act, 12 O.S. 1801 *et seq.*, in 1986, providing guidelines for the establishment of dispute resolution centers.

A 15-member Dispute Resolution Advisory Board, appointed by the Supreme Court of Oklahoma, serves in an advisory role to the administrative director of the courts, who oversees the Alternative Dispute

Early Settlement program directors. Front row, from left Julie Easley, East program; Jorjia Cash, East Central program; Jaxie Johnston, South Central program; Ever Vidana, Northeast program; Sarah Head, Southwest program; and Associate State Director Lauren O'Brien, Oklahoma County program.

Back row, from left State Director Phil Johnson; Michael Nalley, Northwest program; Stacy Horner, West program; LeiLani Armstrong, Tulsa program; Jay Irby, North program; and Tylnn Childress, Central program. (Not pictured: Regan Glinton, Southeast program)

Resolution System. The state director of the Alternative Dispute Resolution System manages the program operations, which are based out of the Administrative Office of the Courts. Annual renewable grants are awarded to the sponsoring agencies by the administrative director of the courts, which provide funding for the regional Early Settlement Mediation program expenses. Program sponsors include regional universities and county governments.

The types of cases resolved by mediation through Early Settlement include, but are not limited to, small claims/civil, child custody, divorce, adult guardianship, child permanency, parent/school, real estate and neighbors. They may involve money, property, personal relationships, harassment, neighborhood disturbances, child permanency or other matters.

In 1996, the Oklahoma Supreme Court approved the implementation of family and divorce mediation through the Early Settlement Mediation program. Statistics, over time, have shown that three out of five marriages in Oklahoma end in divorce, and Oklahoma ranked as high as second in the nation for divorce rate. Family and divorce mediation requires more office time for case management, as each party must complete a pre-mediation interview to screen for potential domestic violence. Volunteer mediators are required to complete an additional 40-hour training to

gain certification in these – many times – highly emotional cases. Parties have found mediation to be an empowering process and gives them the opportunity to resolve the case without the judge getting involved. In fiscal year 2024, there were over 2,100 family cases mediated by Early Settlement, with an average settlement rate of 74%.

Early Settlement mediators are community volunteers from all different walks of life who have completed specialized mediation training, have been observed mediating by the program director or certified volunteer mediator and are certified by the administrative director of the courts. Volunteer mediators assist the parties in negotiating and resolving their own problems. There are over 300 active volunteer mediators statewide.

Although mediation is an out-of-court process, in many cases, attorneys are still involved and provide an invaluable service to their clients. The work attorneys do in preparation for mediation or trial, if the case doesn't settle, is helpful on all fronts. While mediation is not a process where the attorneys do depositions on the other side, the role of the attorney is being present and available to advise their client and, in some cases, provide additional information that helps give the mediator a clearer picture of issues being discussed. Many times, cases are settled with the attorney(s) advising the clients of what's in their best interest when offers are put on the table. Ultimately, it's up to the client to decide if the negotiated agreement is in their best interest versus going before the judge for a trial.

There are still a lot of people who attempt to represent themselves when conflicts arise. Mediation provides a good venue for pro se parties to sit down and, with the aid of the mediator, work through the issues in dispute. Early Settlement mediators encourage parties throughout the process that they have the right to retain or visit with an attorney. In advanced mediations – such as family mediations, where the parties reach an agreement – the agreement is written onto a memorandum of understanding, which is an unsigned form. The parties are encouraged to have an attorney review the memorandum of understanding before they file it as an agreed settlement.

The Child Permanency Mediation program is also used in our juvenile court system when a child (or children) has been in the state's care and, in many cases, there is not a consensus recommendation on what is in the best interest of the child or children. It is an informal meeting facilitated by a neutral mediator, including all the people most closely connected with the case. Everyone is given an opportunity to speak and share concerns as well as possible solutions to the issues. The volunteer mediator encourages everyone to think about the options on the table and work for what is in the best interest of the child(ren). If an agreement is reached, it will be presented to the court for approval.

The Alternative Dispute Resolution System also has mediation services available for state employees through the state agency mediation programs. Many state agencies embrace the opportunity to have mediation available when conflicts arise, such as a supervisor-employee dispute.

The Civil Service Division of the Oklahoma Office of Management and Enterprise Services has a mediation program available for all state agencies to refer cases using a neutral volunteer mediator from another outside agency. Cases that are resolved using mediation prevent parties, in many cases, from having to appear for a due process hearing. This program is widely used by most state agencies.

All three Oklahoma law schools participate in a student extern program offered through the local Early Settlement programs. The law students are required to complete specialized mediation training and become certified during the course of the externship. Over 500 law students have participated since the externship program was established in 2010.

The OBA and the Alternative Dispute Resolution System partnered for many years to offer peer mediation to Oklahoma schools. In 2021, the Alternative Dispute Resolution Program expanded the program statewide. Through the program, students are taught to use mediation as a positive force that can lessen the detrimental effects of conflict while increasing a student's social skills and promoting a positive self-image. This is a free program that is available to all Oklahoma schools.

For more information on the Early Settlement Mediation program, visit adrs.oscn.net.

ABOUT THE AUTHOR

Phil Johnson has been with the Alternative Dispute Resolution System for 28 years, serving the last eight years as the state director.

OBA CLE
Continuing Legal Education

THURSDAY,
AUGUST 14, 2025
Beginning at 9 a.m.
Oklahoma Bar Center, OKC

Live Webcast Available

Save the Date

IMPAIRED DRIVING SEMINAR

SOME TOPICS TO BE COVERED:

Tribal Law

DUI 101

Interlock Devices

Breath Testing/Blood Testing

IDAP

Sobriety Field Testing

Disclaimer: *All views or opinions expressed by any presenter during the course of this CLE is that of the presenter alone and not an opinion of the Oklahoma Bar Association, the employers, or affiliates of the presenters unless specifically stated. Additionally, any materials, including the legal research, are the product of the individual contributor, not the Oklahoma Bar Association. The Oklahoma Bar Association makes no warranty, express or implied, relating to the accuracy or content of these materials.*

ONLINE REGISTRATION COMING SOON

Professional Responsibility Commission Annual Report

As Compiled by the OBA Office of the General Counsel Jan. 1, 2024 – Dec. 31, 2024 | SCBD 7837

PURSUANT TO THE PROVISIONS OF RULE 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2021, ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2024 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION

The Professional Responsibility Commission is composed of seven persons – five lawyer and two non-lawyer members. The lawyer members are nominated by the President of the Oklahoma Bar Association subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. Members serve for a term of three years with a maximum of two terms. Terms expire on December 31st at the conclusion of the three-year term.

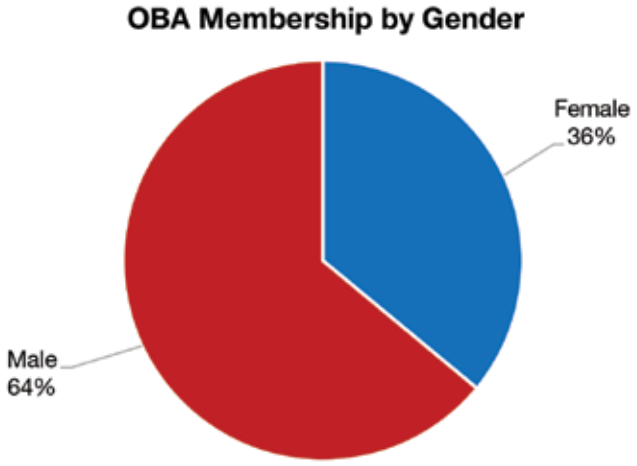
Lawyer members serving on the Commission all or part of 2024 were Chairperson Karen A. Henson, Shawnee; Vice-Chairperson Matthew Beese, Broken Arrow; Alissa Preble Hutter, Norman; Robin Rochelle, Lawton; and Jennifer M. Castillo, Oklahoma City. The Non-Lawyer members were John Thompson, Oklahoma City and James W. Chappel, Norman. Commission members serve without compensation but are reimbursed for actual travel expenses.

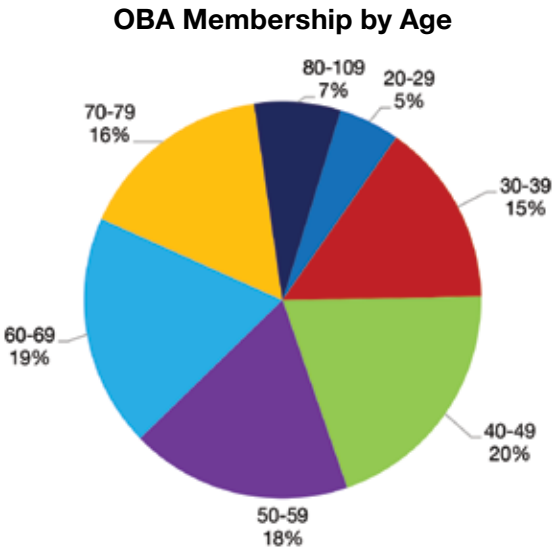
RESPONSIBILITIES

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action as deemed appropriate to effectuate the purposes of the Rules Governing Disciplinary Proceedings. Under the supervision of the Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise, and reports to the Commission the results of investigations made by or at the direction of the General Counsel. The Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of a lawyer. The Office of the General Counsel prosecutes all proceedings under the Rules Governing Disciplinary Proceedings, supervises the investigative process, and represents the Oklahoma Bar Association in all reinstatement proceedings.

OBA MEMBERSHIP STATISTICS

Total membership of the Oklahoma Bar Association as of December 31, 2024, was 19,074 attorneys. The total number of members includes 12,133 males and 6,941 females.



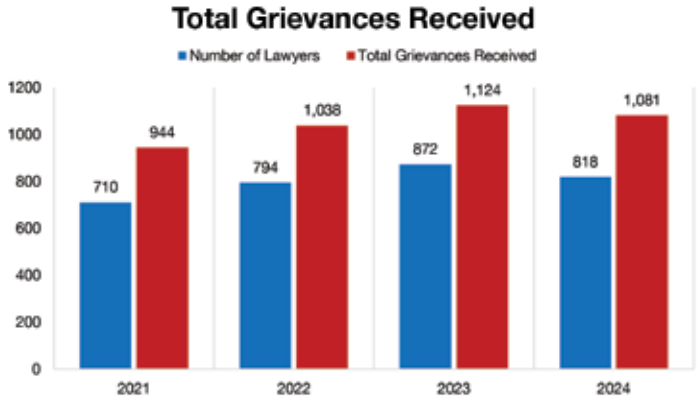


VOLUME OF GRIEVANCES

During 2024, the Office of the General Counsel received 208 formal grievances involving 141 lawyers and 873 informal grievances involving 677 lawyers. In total, 1,081 grievances were received against 818 lawyers. The total number of grievances and lawyers receiving same differs because some lawyers received multiple grievances. In addition, the Office of the General Counsel processed 179 items of general correspondence, which is mail not considered to be a grievance against a lawyer.

On January 1, 2024, 189 formal grievances were carried over from the previous year. The carryover accounted for a total caseload of 397 formal investigations pending throughout 2024. Of those grievances, 201 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 196 formal grievances remained pending as of December 31, 2024

The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Commission.

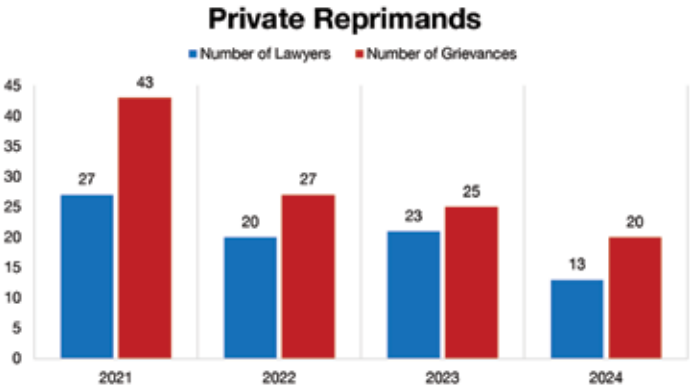


DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION

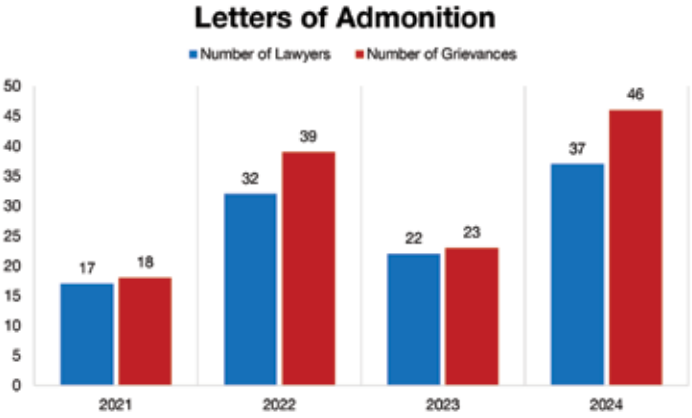
Formal Charges. During 2024, the Professional Responsibility Commission voted the filing of formal disciplinary charges against 7 lawyers involving 25 formal grievances. In addition, the Commission also oversaw the investigation of 9 Rule 7, RGDP formal disciplinary charges filed with the Chief Justice of the Oklahoma Supreme Court.

Private Reprimands. Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of

the lawyer, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2024, the Commission administered private reprimands to 13 lawyers involving 20 formal grievances.



Letters of Admonition. During 2024, the Professional Responsibility Commission voted to issue letters of admonition to 37 lawyers involving 46 formal grievances cautioning that the conduct of the lawyer was dangerously close to a violation of a disciplinary rule.



Dismissals. The Professional Responsibility Commission dismissed 28 grievances that had been received but not concluded due to the resignation pending disciplinary proceedings of the respondent lawyer, a continuing lengthy suspension of the respondent lawyer, death of the respondent lawyer, or disbarment of the respondent lawyer. The remainder were dismissed after the investigation confirmed that the allegation could not be substantiated by clear and convincing evidence.

Diversion Program. The Professional Responsibility Commission may also refer respondent lawyers to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client does not reoccur in the future. During 2024, the Commission referred 19 lawyers to the Discipline Diversion Program for conduct involving 29 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating lawyer and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program staff involved in programming. Program options include Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, and Professionalism in the Practice of Law. In 2024, instructional courses were taught by OBA General Counsel Gina Hendryx, OBA Ethics Counsel Richard D. Stevens, OBA Management Assistance Program Director Jim Calloway, and OBA Practice Management Advisor Julie Bays.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is able to monitor when lawyers encounter difficulty with management of their IOL TA accounts. Upon recommendation of the Office of the General Counsel, the Commission may place those individuals in a tailored program designed to instruct on basic trust accounting procedures. This course is also available to the OBA general membership as a continuing legal education course. Through a new member benefit, all OBA members will receive free access to a comprehensive trust accounting and billing software solution for solo practitioners and small law firms.

2024 Diversion Program Curriculum	Number of Lawyers
Communication and Client Relationship Skills	10
Professionalism in the Practice of Law	1
Professional Responsibility/Ethics School	1
Client Trust Account School	6
Law Office Consultations	3
Law Office Management	11
Continuing Education	1

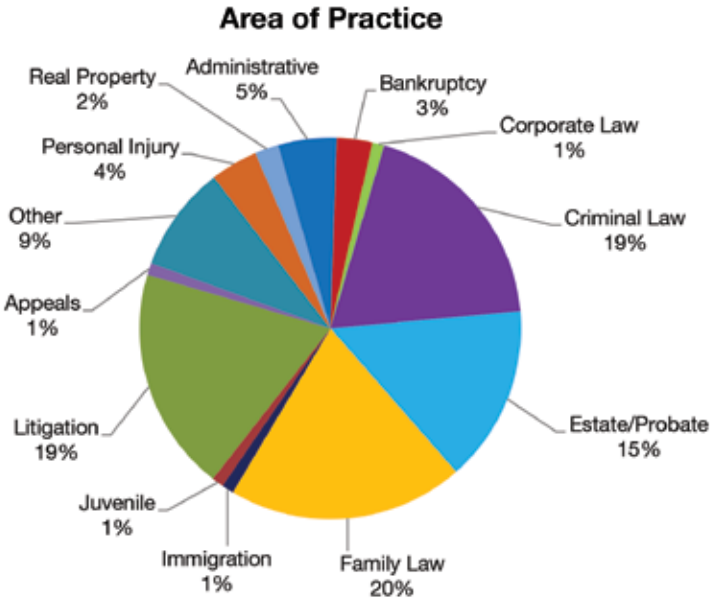
SURVEY OF GRIEVANCES

To better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the number of lawyers receiving grievances, and the practice areas of misconduct involved, the following information is presented.

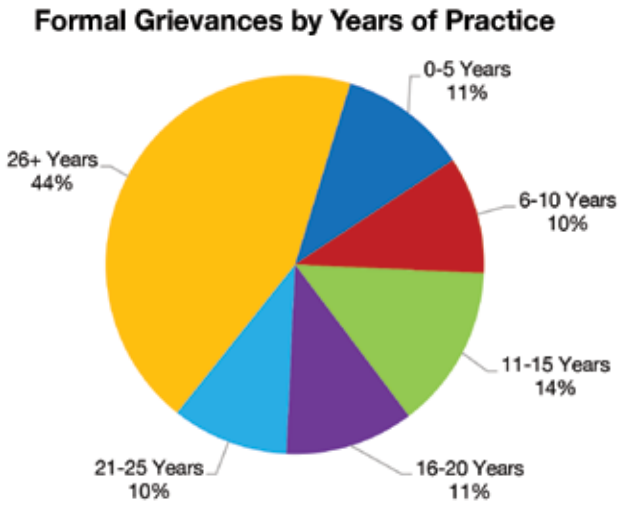
Formal and informal grievances were received against 818 lawyers. Therefore, fewer than five percent of the lawyers licensed to practice law in Oklahoma received a grievance in 2024.

A breakdown of the types of misconduct alleged in the 208 formal grievances opened by the Office of the General Counsel in 2024 is as follows:

Of the 208 formal grievances, the area of practice is as follows:



The number of years in practice of the 141 lawyers receiving formal grievances is as follows:



The largest number of grievances received were against lawyers who have been in practice for 26 years or more. The age of lawyers with allegations of rule violations filed before the Oklahoma Supreme Court in 2024 is depicted below.

Type of Violation Alleged	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
Number of Lawyers Involved	3	9	1	6
Age of Lawyer				
21-29 years old	0	0	0	0
30-49 years old	1	6	1	1
50-59 years old	1	1	0	4
60-74 years old	1	2	0	0
75 or more years old	0	0	0	1

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT

In 2024, discipline was imposed by the Oklahoma Supreme Court in 23 disciplinary cases. The sanctions are as follows:

Disbarment

Respondent	Order Date
Michael David Collins	10/08/2024
Blaine Michael Dyer	10/08/2024

Resignations Pending Disciplinary Proceedings Approved by Court
(Tantamount to Disbarment)

Respondent	Order Date
Guy Wade Jackson	03/04/2024
Christopher Roberts Kelly	04/01/2024
Richard David Marrs	04/08/2024
Joseph Dewayne Kalka	05/06/2024
Lee Griffin	05/06/2024
Chad Adrian Greer	06/17/2024
Debra Dawn Campbell	09/30/2024
Mitchell Kenneth Coatney	10/21/2024
Charles Edward Wade Jr.	10/28/2024
Julia Marie Ezell	12/09/2024
Matthew Corey Frisby	12/16/2024

Disciplinary Suspensions

Respondent	Length	Order Date
Ronald Edward Durbin II	Interim	04/08/2024
Kenyatta Ray Bethea	One year	05/14/2024
Kelly John Barlean	Interim	05/20/2024
Blaine Michael Dyer	Interim	06/24/2024
Michael Robert Abdoveis	One year	06/25/2024
Robert Murl Messerli	2 years and 1 day	06/25/2024
Andrea Beth Fryar	Interim	07/31/2024
Courtney Rae Jordan	One year	09/10/2024
David Earl Johnson	2 years and 1 day	09/10/2024
David Leo Smith	30 days	09/17/2024

Confidential Suspensions

Respondent	Length	Order Date
Confidential	Indefinite (R10 RGDP)	04/15/2024

Dismissals

Respondent	Order Date
Bradley Kent Donnell	03/26/2024
Steven W. Vincent (Deceased)	07/26/2024

There were 13 discipline cases filed with the Oklahoma Supreme Court as of January 1, 2024. During 2024, 19 new formal complaints were filed for a total of 32 cases before the Oklahoma Supreme Court during 2024. On December 31, 2024, 15 cases remained open before the Oklahoma Supreme Court.

Type of Discipline Imposed	Disbarment	RPDP	Disciplinary Suspension	Confidential Suspension	Public Censure	Dismissals
Number of Attorneys Involved	2	11	10	1	0	1
Age of Attorney						
21-29 years old	0	0	0	0	0	0
30-49 years old	1	3	7	1	0	0
50-74 years old	1	8	3	0	0	1
75 or more years old	0	0	0	0	0	0

REINSTATEMENTS

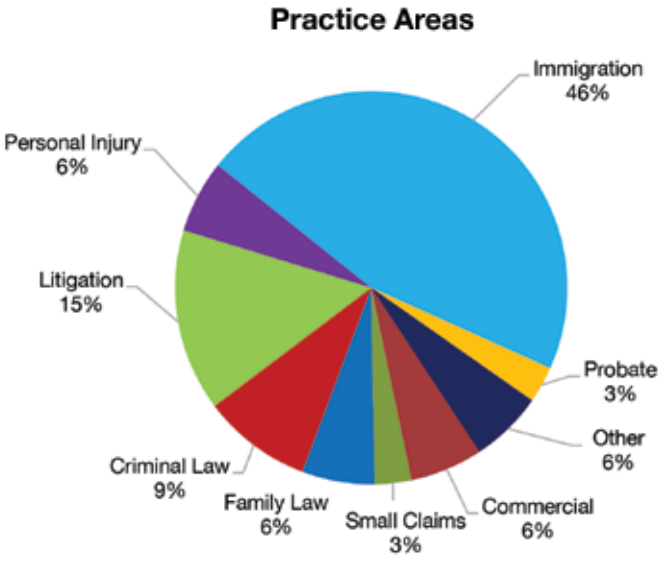
On January 1, 2024, there were four Petitions for Reinstatement pending before the Professional Responsibility Tribunal and no Petitions for Reinstatement pending with the Oklahoma Supreme Court. There were two new Petitions for Reinstatement filed in 2024. In 2024, the Oklahoma Supreme Court granted two reinstatements. On December 31, 2024, there were three Petitions for Reinstatement pending before the Professional Responsibility Tribunal and two Petitions for Reinstatement pending before the Oklahoma Supreme Court.

UNAUTHORIZED PRACTICE OF LAW

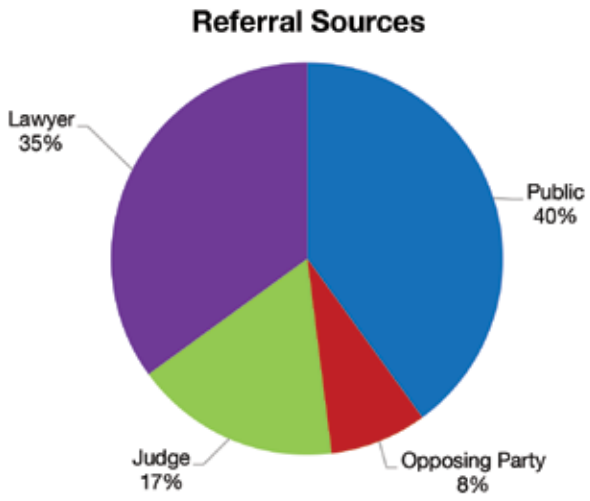
Rule 5.1 (b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers, suspended lawyers and disbarred lawyers. Rule 5.5, ORPC, regulates the unauthorized practice of law by lawyers and prohibits lawyers from assisting others in doing so.

Requests for Investigation. In 2024, the Office of the General Counsel received 33 requests for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

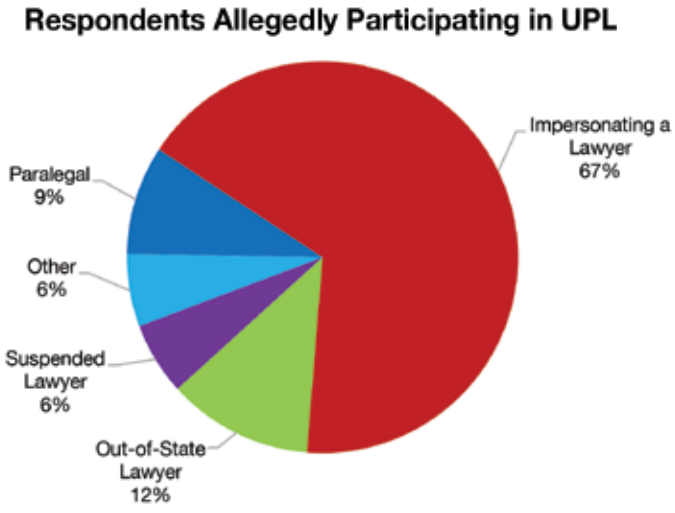
Practice Areas. Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling family law matters, but that changed in 2024, as 15% of the UPL complaints involved litigation matters.



Referral Sources. Requests for investigations of the unauthorized practice of law come from multiple sources. In 2024, the Office of the General Counsel received one-half of UPL complaints from lawyers.



Respondents. In 2024, most requests for investigation into allegations of the unauthorized practice of law related to impersonating a lawyer. For purposes of this summary, the category "impersonating a lawyer" includes any person who is performing the duties that only a licensed lawyer is allowed to do.

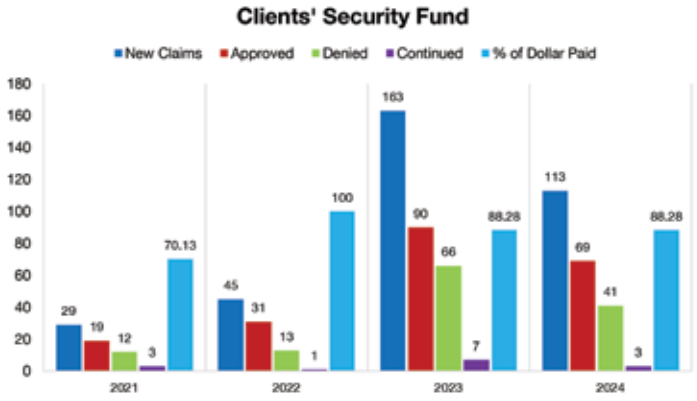


Enforcement. In 2024, the Office of the General Counsel took formal action in five matters. Formal action included issuing cease and desist letters, initiating formal investigations through the lawyer discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Nine matters were closed after corrective action was taken and the remainder of the matters remain under investigation.

CLIENTS' SECURITY FUND

The Clients' Security Fund was established in 1965 by the Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee, which is comprised of 17 members, 14 lawyer members and three non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2024, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates $175,000.00 each year to the Clients' Security Fund for the payment of approved claims.

In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is $175,000.00. The Office of the General Counsel reviews, investigates, and presents the claims to the committee. In 2024, the Office of the General Counsel presented 113 claims to the Committee. The Committee approved 69 claims, denied 41 claims, and continued three claims into the following year for further investigation. In 2024, the OBA Board of Governors approved the payment of additional funds, including carryover funds from 2023, for reimbursement to claimants. In 2024, the Clients' Security Fund paid a total of $276,868.52 on 69 approved claims.



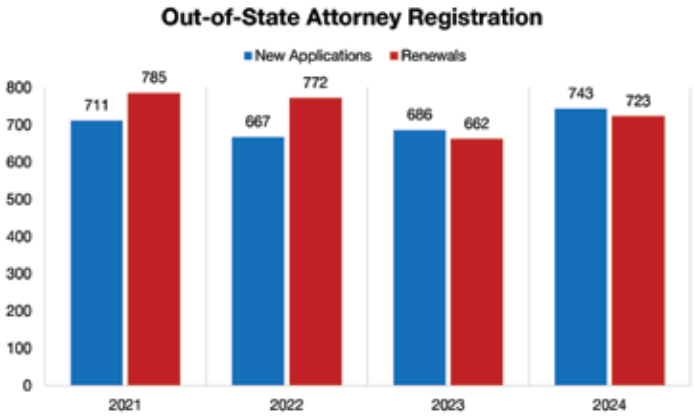
CIVIL ACTIONS (NONDISCIPLINE) INVOLVING THE OBA

The Office of the General Counsel represented the Oklahoma Bar Association in several civil (non-discipline) matters during 2024. Several cases carried forward into 2025. The following is a summary of all 2024 civil actions against or involving the Oklahoma Bar Association:

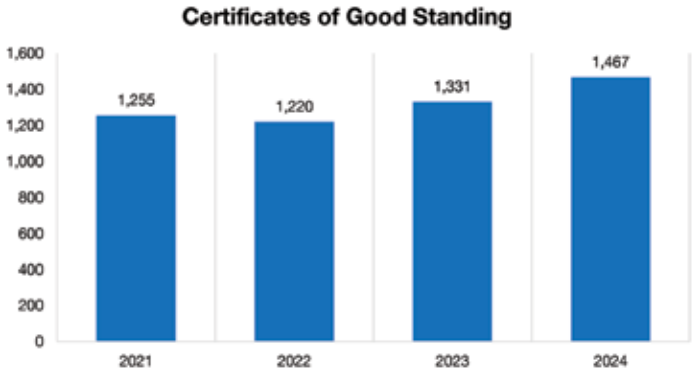
- *Alberta Rose Jones v. Eric Bayat, et al.,* Lincoln County District Court No. CJ-2021-21. Rose filed a Complaint on March 5, 2021. Rose named ten defendants and "Does 1-25," including the Oklahoma Bar Association and an Assistant General Counsel. Jones alleged that the Oklahoma Bar Association failed to achieve her son's legal goals. To date, the Oklahoma Bar Association has not been served. This matter was transferred to Kay County District Judge Turner.
- *Alberta Rose Jones v. Eric Bayat, et al.,* Lincoln County District Court No. CJ-2022-27. Rose filed a Petition on February 25, 2022 against 11 named defendants and 10 "Doe" defendants. The Petition alleged the Oklahoma Bar Association ignored Open Records Act requests and her dissatisfaction at the resolution of bar grievances. The Oklahoma Bar Association filed a motion to dismiss on March 23, 2022. On April 11, 2022, this matter was transferred to Payne County District Judge Corley. This matter was dismissed May 2, 2024.
- *Rigsby v. Burkhulter, et al.,* United States District Court for the Eastern District of Oklahoma, Case No. CIV-22-287. Rigsby filed a Complaint against multiple defendants – including the Oklahoma Bar Association – on October 7, 2022. Although the facts are unclear, Rigsby appears to contend that the Oklahoma Bar Association failed to enjoin his public defenders from violating his "rights" and would not appoint counsel for him. The Oklahoma Bar Association has not been served. On November 28, 2022, the court dismissed Rigsby's action without prejudice for the failure to pay the entire filing and administrative fees as directed by the court. Rigsby appealed multiple decisions of the Court. Currently, Tenth Circuit Court of Appeals Case No. 24-7000 is pending.
- *Rigsby v. Burkhulter, et al.,* United States Court of Appeals for the Tenth Circuit, Case No. 24-7000. On January 4, 2024, Rigsby filed his third appeal of an order in CIV-22-287 regarding the Court's denial of his "motion to show new truths in case" and his "motion to show that it's not withstanding to close case." Matter terminated without judicial action and mandate was issued on February 1, 2024.
- *Winningham v. Gina L. Hendryx,* Oklahoma County Case No. CJ-2023-3789. On July 7, 2023, Plaintiff filed an action for declaratory relief. The Oklahoma Bar Association moved to dismiss the matter. After hearing argument, this matter was dismissed on November 2, 2023. Winningham has since filed post-trial motions and the Oklahoma Bar Association has responded. This matter is pending.
- *Mitchell v. Hill et al,* United States District Court for the Western District of Oklahoma, Case No. CIV-23-686. Plaintiff filed a 42 USC §1983 action against the Oklahoma Bar Association and several other defendants on August 4, 2023. The Oklahoma Bar Association was not served. On April 24, 2024, the court dismissed the matter without prejudice.
- *BlueviewTam Farm, LLC, et al., v. Jones Brown, et al.,* Tulsa County Case No. CJ-2023-3033. Ronald Durbin filed a class action suit on behalf of multiple plaintiffs alleging a variety of causes of actions against the Oklahoma Bar Association and two staff members. The Oklahoma Bar Association defendants have not been served. This matter is pending.
- *Gravlee v. State of Oklahoma, et al.* United States District Court for the Western District of Oklahoma, Case No. CIV-24-167. Plaintiff filed suit February 14, 2024 against the OBA and multiple other defendants for apparent violations of 42 U.S.C. § 1983 and other claims. This matter was dismissed without prejudice on October 11, 2024.
- *Margaret Lowery v. Miller, et al.,* United States District Court for the Northern District of Oklahoma, Case No. CIV-24-204. On May 2, 2024, Plaintiff filed suit against multiple defendants, including members of the Illinois Supreme Court Attorney Registration and Discipline Commission, the Oklahoma Supreme Court, and the Oklahoma Bar Association. Lowery's prolific filings required responses. On September 13, 2024, days prior to the hearing on motions and Plaintiff's and her attorney's show cause hearing, Lowery dismissed the Oklahoma Bar Association from the action.
- *Durbin v. Oklahoma Bar Association, et al.,* United States District Court for the Northern District of Oklahoma, Case No. CIV-24-603. On December 12, 2024, Plaintiff filed a 326 page Complaint against the Oklahoma Bar Association and in excess of 90 other defendants. This matter was dismissed without prejudice by the presiding judge on January 23, 2025.

ATTORNEY SUPPORT SERVICES

Out-of-State Attorney Registration. In 2024, the Office of the General Counsel processed 743 new applications and 723 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation due to their incomes, may request a waiver of the application fee. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit."



Certificates of Good Standing. In 2024, the Office of the General Counsel prepared 1,467 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.

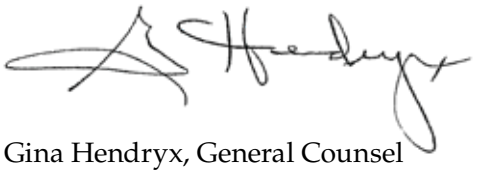


ETHICS AND EDUCATION

During 2024, lawyers in the General Counsel's office presented more than 50 hours of continuing legal education programs to county bar association meetings, lawyer practice groups, OBA programs, all three state law schools, and various legal organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. These efforts direct lawyers to a better understanding of their ethical requirements and the disciplinary process and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. The Office of the General Counsel worked with lawyer groups to assist with presentation of programming via in person presentations and video conferencing platforms.

The lawyers, investigators, and support staff of the General Counsel's office also attended continuing education programs in an effort to increase their own skills and knowledge in attorney discipline. These included trainings by the Oklahoma Bar Association (OBA), National Organization of Bar Counsel (NOBC), and the Organization of Bar Investigators (OBI).

RESPECTFULLY SUBMITTED this 6th day of February, 2025, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.



Gina Hendryx, General Counsel
Oklahoma Bar Association

Professional Responsibility Tribunal Annual Report

Jan. 1, 2024 – Dec. 31, 2024 | SCBD 7838

THE PROFESSIONAL RESPONSIBILITY TRIBUNAL was established by order of the Supreme Court of Oklahoma in 1981, under the Rules Governing Disciplinary Proceedings ("RGDP"), 5 0.S. 2021, ch. 1, app. I-A. The primary function of the PRT is to conduct hearings on complaints filed against lawyers in formal disciplinary and personal incapacity proceedings and on petitions for reinstatement to the practice of law. A formal disciplinary proceeding is initiated by a written complaint filed with the Chief Justice of the Supreme Court. Petitions for reinstatement are filed with the Clerk of the Supreme Court.

COMPOSITION AND APPOINTMENT

The PRT consists of 21 members, 14 of whom are lawyers, and 7 of whom are non-lawyers.

The lawyers on the PRT are active members in good standing of the Oklahoma Bar Association. Lawyer members are appointed by the OBA President, with the approval of the Board of Governors. Non-lawyer members are appointed by the Governor of the State of Oklahoma. Each member is appointed to serve a three-year term and limited to two terms. Terms end on June 30th of the last year of a member's service.

Pursuant to Rule 4.2, RGDP, members are required to meet annually to address organizational and other matters touching upon the PRT's purpose and objective. They also elect a Chief Master and Vice-Chief Master, both of whom serve for a one-year term. PRT members receive no compensation for their services, but they are entitled to be reimbursed for travel and other reasonable expenses incidental to the performance of their duties.

The lawyer members of the PRT who served during all or part of 2024 were: Lane R. Neal, Oklahoma City; Martha Rupp Carter, Tulsa; Charles W. Chesnut, Miami; Melissa G. DeLacerda, Stillwater; Bryan Dixon, Edmond; Jennifer E. Irish, Edmond; William Kellough, Tulsa; Anne S. Maguire, Tulsa; Greg Mashburn, Norman; Malinda Matlock, Oklahoma City; Patricia G. Parrish, Oklahoma City; Kendall Sykes, Oklahoma City; Lynn Allan Pringle, Oklahoma City; Richard D. White, Tulsa; Sarah Green, Oklahoma City; and Kelly Kavalier, Stillwater.

The non-lawyer members who served during all or part of 2024 were: Stan McCabe, Tulsa; Jeffrey Park, Bixby; Kevin Martin, Woodward; Susan Regier, Oklahoma City; Alan N. Case, Woodward; Matthew Ralls, Oklahoma City; Scott Rogers, Warner; and Brett Fehrle, Mustang.

The annual meeting was held on July 10, 2024, at the OBA Annual Meeting. Agenda items included a presentation by Gina Hendryx, General Counsel[1] of the OBA, recognition of new members and members whose terms had ended, and discussions concerning the work of the PRT. Martha Rupp Carter was elected Chief Master and Sarah Green was elected Vice-Chief Master, each to serve a one-year term.

GOVERNANCE

All proceedings that come before the PRT are governed by the RGDP. However, proceedings and the reception of evidence are, by reference, governed generally by the rules in civil proceedings, except as otherwise provided by the RGDP.

The PRT is authorized to adopt appropriate procedural rules which govern the conduct of the proceedings before it. Such rules include, but are not limited to, provisions for requests for disqualification of members of the PRT assigned to hear a particular proceeding.

ACTION TAKEN AFTER NOTICE RECEIVED

After notice of the filing of a disciplinary complaint or reinstatement petition is received, the Chief Master (or Vice-Chief Master if the Chief Master is unavailable) selects three (3) PRT members (two lawyers and one non-lawyer) to serve as a Trial Panel. The Chief

Master designates one of the two lawyer-members to serve as Presiding Master. Two of the three Masters constitute a quorum for purposes of conducting hearings, ruling on and receiving evidence, and rendering findings of fact and conclusions of law.

In disciplinary proceedings, after the respondent's time to answer expires, the complaint and the answer, if any, are then lodged with the Clerk of the Supreme Court. The complaint and all further filings and proceedings with respect to the case then become a matter of public record.

The Chief Master notifies the respondent or petitioner, as the case may be, and General Counsel of the appointment and membership of a Trial Panel and the time and place for hearing. In disciplinary proceedings, a hearing is to be held not less than 30 days nor more than 60 days from date of appointment of the Trial Panel. Hearings on reinstatement petitions are to be held not less than 60 days nor more than 90 days after the petition has been filed. Extensions of these periods, however, may be granted by the Presiding Master for good cause shown.

After a proceeding is placed in the hands of a Trial Panel, it exercises general supervisory control over all pre-hearing and hearing issues. Members of a Trial Panel function in the same manner as a court by maintaining their independence and impartiality in all proceedings. Except in purely ministerial, scheduling, or procedural matters, Trial Panel members do not engage in *ex parte* communications with the parties. Depending on the complexity of the proceeding, the Presiding Master may hold status conferences and issue scheduling orders as a means of narrowing the issues and streamlining the case for trial. Parties may conduct discovery in the same manner as in civil cases.

Hearings are open to the public and all proceedings before a Trial Panel are stenographically recorded and transcribed. Oaths or affirmations may be administered, and subpoenas may be issued, by the Presiding Master, or by any officer authorized by law to administer an oath or issue subpoenas. Hearings, which resemble bench trials, are directed by the Presiding Master.

TRIAL PANEL REPORTS

After the conclusion of a hearing, the Trial Panel prepares a written report to the Oklahoma Supreme Court. The report includes findings of facts on all pertinent issues, conclusions of law, and a recommendation as to the appropriate measure of discipline to be imposed or, in the case of a reinstatement petitioner, whether it should be granted. In all proceedings, any recommendation is based on a finding that the complainant or petitioner, as the case may be, has or has not satisfied the "clear and convincing" standard of proof. The Trial Panel report further includes a recommendation as to whether costs of investigation, the record, and proceedings should be imposed on the respondent or petitioner. Also filed in the case are all pleadings, transcript of proceeding, and exhibits offered at the hearing.

Trial Panel reports and recommendations are advisory. The Oklahoma Supreme Court has exclusive jurisdiction over all disciplinary and reinstatement matters. It has the constitutional and non-delegable power to regulate both the practice of law and legal practitioners. Accordingly, the Oklahoma Supreme Court is bound by neither the findings nor the recommendation of action, as its review of each proceeding is *de novo*.

ANNUAL REPORTS

Rule 14.1, RGDP, requires the PRT to report annually on its activities for the preceding year. As a function of its organization, the PRT operates from July 1 through June 30. However, annual reports are based on the calendar year. Therefore, this Annual Report covers the activities of the PRT for the preceding year, 2024.

ACTIVITY IN 2024

At the beginning of the calendar year, 15 disciplinary and four reinstatement proceedings were pending before the PRT as carry-over matters from the previous year. Generally, a matter is considered "pending" from the time the PRT *receives notice* of its filing until the Trial Panel report is filed. Certain events reduce or extend the pending status of a proceeding, such as the resignation of a respondent or the remand of a matter for additional hearing. In matters involving alleged personal incapacity, orders by the Supreme Court of interim suspension, or suspension until reinstated, operate to either postpone a hearing on discipline or remove the matter from the PRT docket.

In regard to new matters, the PRT received notice of the following: 3 Rule 6, RGDP matters, 2 Rule 7, RGDP matters, 6 Rule 8, RGDP matters, and one Rule 10 suspension for personal incapacity to practice law matter, and 3 Rule 11, RGDP reinstatement petitions. Trial Panels conducted a total of 9 hearings; 5 in disciplinary proceedings and 4 in reinstatement proceedings.

On December 31, 2024, a total of nine (9) matters, five (5) disciplinary and four (4) reinstatement proceedings, were pending before the PRT.

Proceeding Type	Pending Before the PRT Jan. 1, 2024	New Matters Before the PRT in 2024	Hearings Held Before the PRT in 2024	Trial Panel Reports Filed	Pending Before the PRT Dec. 31, 2024
Disciplinary	15	18	5	4	5
Reinstatement	4	3	4	4	4

CONCLUSION

Members of the PRT demonstrated continued service to the Bar and the public of this State, as shown by the substantial time dedicated to each assigned proceeding. The members' commitment to the purpose and responsibilities of the PRT is deserving of the appreciation of the Bar and all its members and certainly is appreciated by this writer.

Dated this 6th day of February 2025.

Martha Rupp Carter, Chief Master
Professional Responsibility Tribunal

ENDNOTE

1. The General Counsel of the OBA customarily makes an appearance at the annual meeting for the purpose of welcoming members and to answer any questions of PRT members. Given the independent nature of the PRT, all other business is conducted in the absence of the General Counsel.

SECOND ANNUAL

Oklahoma Chief Justice Colloquium On Civility and Ethics

TUESDAY, MAY 6

1:30 P.M. TO 3 P.M.

OKLAHOMA JUDICIAL CENTER AUDITORIUM
2100 N. LINCOLN BLVD., OKLAHOMA CITY

HONORING
OKLAHOMA SUPREME COURT CHIEF JUSTICE DUSTIN P. ROWE

GUEST SPEAKER
PROFESSOR LEAH JACKSON TEAGUE BAYLOR UNIVERSITY LAW SCHOOL

The Oklahoma Supreme Court invites you to attend the second annual Oklahoma Chief Justice Colloquium on Civility and Ethics. This year's guest speaker is Baylor University Law School Professor Leah Witcher Jackson Teague. She will speak on the critical role of all generations of lawyers, legal traditions and ethical standards, how to mentor for success and balancing new tech tools with strong ethical responsibility.

REGISTER TODAY AT OK.WEBCREDENZA.COM

ATHENS GREECE

October 12-18, 2025
12 CLE Credits

Trials of Socrates

Where History Breathes and Adventure Awaits!

Experience the perfect blend of **education, culture, and adventure**! Earn your CLE credits while exploring world-renowned historical sites, indulging in delicious Mediterranean cuisine, and soaking in breathtaking coastal views. Don't miss this chance to learn, connect, and unwind in one of the most enchanting destinations in the world. **Reserve your spot today—space is limited!**

Accommodations: Divani Palace Acropolis

Parthenonos 19, Athina 117 42, Greece • 21 miles from Athens International Airport (ATH)

Registration Packages

INCLUDED: 6 night stay in 4-star hotel | Round-trip airport/hotel transport | CLE Sessions | All Tours
1-Reception | 6-Breakfasts | 1-Lunch | 1-Dinner

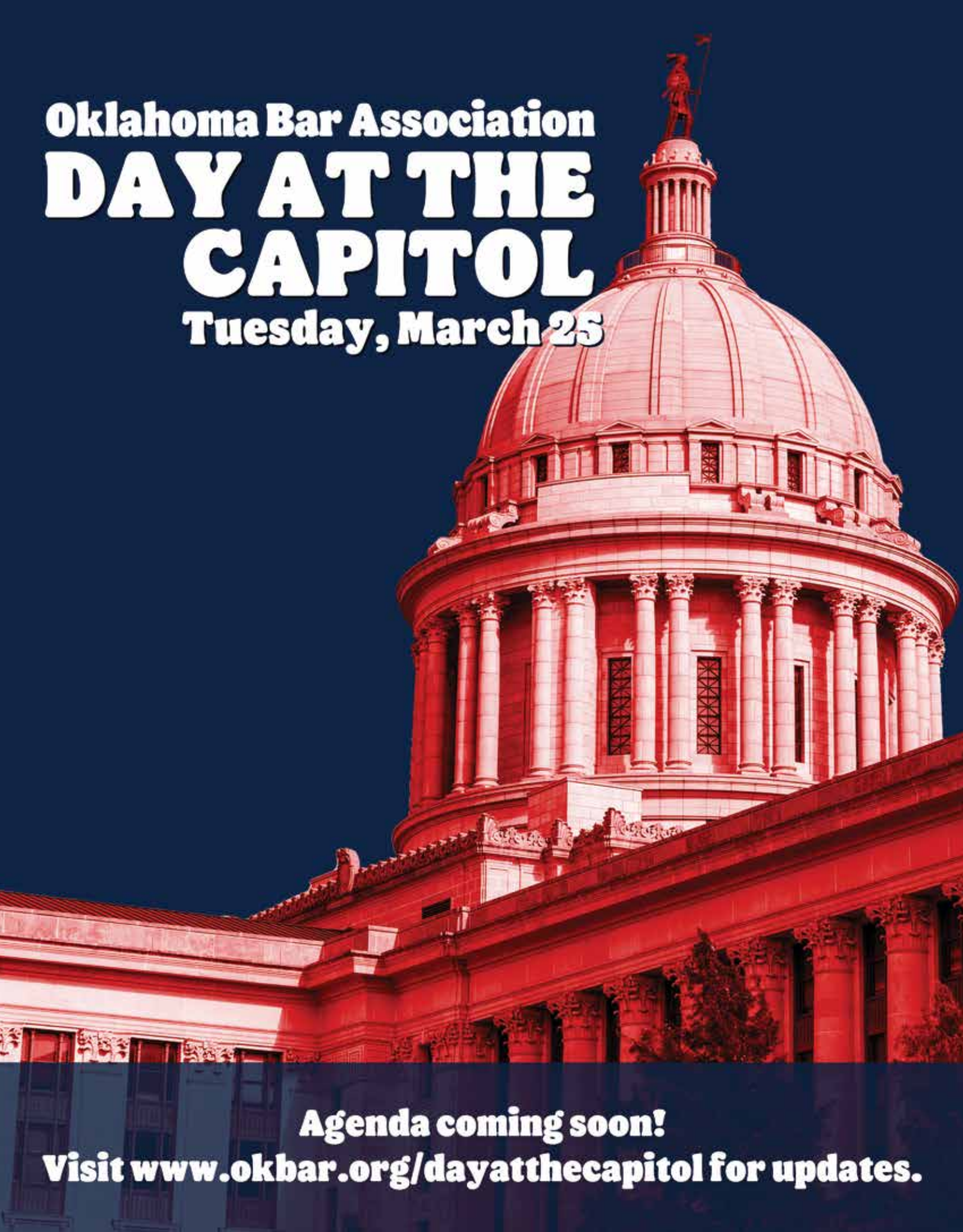
ATTORNEY ONLY	ATTORNEY & GUEST	TWO ATTORNEYS
One Traveler - 1 CLE Pass	Two Travelers - 1 CLE Pass	Two Travelers - 2 CLE Passes
$6,000	**$8,000**	**$9,000**
$1,000/PP Deposit thru June 14,2025	$1,000/PP Deposit thru June 14,2025	$1,000/PP Deposit thru June 14,2025

Price Increase on May 1, 2025.
A $500 late registration fee will apply for registrations completed after May 1, 2025.

Joel Oster, Esq.
Comedian of Law & Attorney

Joel is a litigator and national speaker to attorneys. He currently is in private practice specializing in attorney ethics, including implicit bias elimination and competency. Being the host of the podcast, DeBriefing the Law, Joel regularly speaks on attorney ethics nationwide on issues relating to attorneys reaching their full potential in the practice of law. Joel has spoken at numerous bench and bar conferences and as well as other specialized attorney conferences.

Visit www.DestinationCLEs.com for more information or to register.


Oklahoma Bar Association
DAY AT THE CAPITOL
Tuesday, March 25
Agenda coming soon!
Visit www.okbar.org/dayatthecapitol for updates.

Marching Into Spring: OBA Members Work To Advance the Rule of Law

By Janet Johnson

THE MONTH OF MARCH in Oklahoma often feels like a wild ride. In this 31-day span, we might experience four seasons of weather – sometimes all within a 24-hour period. The happy news is that by the end of this month, we can be fairly certain spring will have sprung. Brighter days are almost here!

Those who make a profession or a habit of tuning into the Oklahoma Legislature are also accustomed to a certain amount of unpredictability. Legislative bills that begin as one thing may be substantially changed during the "sausage-making" process. When a bill is finally passed, it may have shape-shifted into something totally different than what was first publicized. And that process is now well underway. By the end of March, the deadline will have passed for the third reading of bills and joint resolutions within their chamber of origin. Then, the process begins all over again in the opposite chamber.

I am grateful for our Legislative Monitoring Committee, which stays busy every spring keeping tabs on these procedural deadlines. This year, we have an active and committed group of volunteers currently tracking numerous bills that could impact your practice and the administration of justice.

The 2025 Legislative Kickoff program, held at the Oklahoma Bar Center, featured a panel discussion focused on legislation expected to be considered during the spring 2025 session. From left moderator Clay Taylor, panelist Rep. Erick Harris, moderator Brett Robinson and panelist Rep. Collin Duel

I would particularly like to thank committee Chair Teena Gunter and Co-Chair Brett Robinson, who are leading the committee this year. During our recent Legislative Kickoff event, Ms. Gunter was also a featured speaker in the "90 Bills in 90 Minutes" portion of the program, presenting on the topic of proposed legislation affecting the practice of civil litigation. Other event speakers and covered topics were Kensey Wright, family law; James Rucker, governmental law; Mark E. Bright, criminal law; Anthony Hendricks,

technology; Judge Thad Balkman, courts; Terrell Monks, estate law; Kaylee Davis-Maddy, energy and environment; and Hayley Jones, education. Attendees also heard from a legislative panel moderated by Brett Robinson and Clay Taylor and featuring panelists Rep. Collin Duel and Rep. Erick Harris.

I would like to congratulate everyone who volunteered their time and energy to make this year's event a success. Annually tracking hundreds of bills is a huge undertaking, and I can't thank you enough for doing your part to keep our membership informed. And if you missed the Legislative Kickoff in person, don't worry – our OBA CLE Department has you covered! The program is available on demand and is approved for 3 hours of MCLE credit. Access the program online at https://bit.ly/4hvYRMf.

Later this month, you will have the opportunity to join your colleagues at the annual OBA Day at the Capitol, where you may continue the discussion and take a deeper dive into bills of interest as legislation continues to wind its way through the process. You will also have the opportunity to join other members as they cross the street and meet face-to-face with lawmakers, offering professional expertise and advice as they consider the critical legislation that affects neighbors, communities and clients. Registration information will be coming soon.

While we may not always necessarily agree with the decisions made at 23rd and Lincoln, it is important that we, as lawyers and citizens, participate in the conversation. Building relationships builds bridges. My best advice for dealing with shifting weather, both literal and metaphorical? Embrace the unpredictability – at least it's never boring.

Legislative Monitoring Committee Chair Teena Gunter, general counsel at the Oklahoma Department of Agriculture, Food and Forestry, discusses civil litigation during the "90 Bills in 90 Minutes" segment of the Legislative Kickoff program.

Janet

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

The Law Firm Automation Manifesto and Law Firm 'Cookbooks'

By Jim Calloway

LAST MONTH IN THIS SPACE, we discussed document automation for law offices. Given the improvement in document assembly tools and their anticipated future path of improvement, more lawyers should be creating "first drafts" through a more automated process, even if it is something as simple as creating Word templates for documents they prepare regularly.

Now, we will turn to a topic I have touched on frequently over the years: office procedures manuals (which are sometimes informally called law firm cookbooks). These are of increased importance in 2025 because of the impact of emerging automation tools beyond document assembly, such as allowing clients to schedule appointments online.

"The client needs to come in. Please contact them to schedule an appointment," is evolving to, "The client needs to come in. Send them an appointment scheduler email (or text)." This communication includes several suggested times among which to choose and a brief explanation of why they need to schedule this appointment.

But the first method involves manual processes and staff time. The second involves typing the reason for the meeting in the scheduler email and hitting send. No further action or time is required until you hear back from the software that an appointment has been scheduled, or X days have passed with no response.

Using technological tools to reduce time spent on manual processes is very important for law firms' futures, as is standardization. The goal is for everyone to accomplish tasks the same way. I've visited law firms with three partners who each insisted on handling tasks in their own unique way, including how the client files were organized. It became challenging when that lawyer's assistant was absent for an extended period. While other staff members in the firm might have been willing to step in and assist, it was frustrating with different client file organization, processes and even different forms.

Standardization is good and makes your daily operations run more smoothly. Here are some tips on building your law firm procedures "cookbook."

TAKE IT FROM BILL GATES

One of Bill Gates' most quoted observations is: "The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency." His observation offers valuable lessons for lawyers aiming to enhance law firm operations. Here's how it can apply.

Prioritize Process Optimization Before Automation

Lesson: Lawyers must evaluate and streamline their workflows before introducing or upgrading technology. For example, if the intake process for new clients is disorganized, automating it without improvement will only create more confusion and inefficiencies.

Action: Conduct a detailed review of existing operations to identify bottlenecks, redundancies or gaps. Focus on creating efficient systems first, then use automation to enhance them.

Focus on Quality, Not Just Speed

Lesson: Technology can make tasks faster, but it won't fix errors in poor processes. For example, automating contract drafting with templates and automation will only work well if the templates are accurate and well-crafted.

Action: Ensure the foundational work – like legal templates, precedent databases and workflows – is robust and error free before automating.

Start Small, and Scale

Lesson: Applying automation incrementally to specific areas (*e.g.*, timekeeping, billing or e-discovery) allows law firms to test its impact on efficiency before scaling up.

Action: Begin by automating low-risk, repetitive tasks. Once successful, expand automation to other operations.

Emphasize Client Experience

Lesson: Automation should not only improve internal efficiency but also enhance client interactions. For instance, automating client updates or providing access to information through a client portal can improve transparency and satisfaction.

Action: Use technology to streamline communication and improve the overall client experience without sacrificing the personal touch.

By focusing on these lessons, law firms can ensure that technology and automation serve as tools for amplifying efficiency, improving client service and driving long-term success.

LESSONS FROM *THE CHECKLIST MANIFESTO*

The Checklist Manifesto: How to Get Things Right by Atul Gawande is a book I have been recommending to Oklahoma lawyers for more than two decades. It is timeless, containing a compelling exploration of how simple checklists can significantly improve outcomes in complex situations. Drawing on his experiences as a surgeon and case studies from diverse fields – such as aviation, construction and disaster management – Dr. Gawande illustrates how the human brain often struggles with managing intricate tasks and avoiding critical errors, especially under pressure.

The book emphasizes that even experts can overlook essential steps, especially when working under tight time constraints. Checklists serve as a powerful tool to ensure consistency, accuracy and collaboration. Dr. Gawande outlines how checklists, when designed thoughtfully, can enhance communication, streamline processes and ultimately impact lives – whether in an operating room, an airplane cockpit or a law office. This, in a nutshell, is why law firms should have procedures manuals.

The book constitutes a call to action for all of us to embrace the simplicity and rigor of checklists to navigate complexity, reduce errors and achieve excellence. Since the book, a former *New York Time*s bestseller, was originally published long ago, it is inexpensive. The current paperback version is listed for less than $10 on Amazon.

We often use to-do lists to make certain we get the day's tasks completed. But wouldn't it be nice if many of the lists were already created?

Examples of Processes to Document

These also illustrate how many of your processes are a blend of technology tasks and assignments for staff or lawyers. Numbers are hypothetical for example purposes only.

- Ten things we do after filing a new consumer bankruptcy case
- Seven things we do after being retained for a new criminal defense case where charges have been filed
- Four things we do after being retained for a new criminal defense case where charges have *not* been filed
- Seven things we do ASAP after being retained for the defense of a foreclosure

You may think you know these brief items from memory, but that is the point. We don't want to rely on fallible memories. Even more importantly, the existence of accurate checklists makes it more comfortable to delegate items to your staff because they have great instructions.

I believe the office procedures manual should be easily accessible on the firm computer network. But I also suggest buying a pair (or more) of three-ring binders in a unique color to physically have the manual available. It will be an ongoing process of updating the manual. Most law firms will not be able to cease operations for a time to create the manual. So it is important that every lawyer doing a series of tasks that are not yet documented take the additional time to create the first draft of the checklist, and there should be regular times the firm reviews processes for inclusion in the procedures manual. Consider updating and documenting your procedures as an investment in the future of your law firm.

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

(continued from page 4)

when you lie down and when you get up; tie them as symbols on your hands and attire; write them on the doorframes of your houses and on your gates."

In a 2022 survey by the Annenberg School for Communication at the University of Pennsylvania,[1] findings showed that:

- Less than half of U.S. adults (47%) could name all three branches of government, down from 56% in 2021 and the first decline on this question since 2016.
- The number of respondents who could, unprompted, name each of the five freedoms guaranteed by the First Amendment also declined, sharply in some cases. For example, less than 1 in 4 people (24%) could name freedom of religion, down from 56% in 2021.

Thursday, May 1, is Law Day, and the 2025 theme is "The Constitution's Promise: Out of Many, One." Please consider reaching out to schools and organizations in your community to speak on civics and the rule of law. Many of us remember being called upon regularly to speak at public schools or chambers of commerce on the role of lawyers, civics and government. Somewhere along the way, those calls stopped for me. Maybe you never had the opportunity. Now is a great time to reengage with young and older members of our communities.

Another opportunity for you to get involved in supporting the rule of law occurs this month. In my February message, I mentioned that the Board of Governors and many of our members will meet on March 25 for this year's OBA Day at the Capitol. It's a great opportunity for you to reach out to your local legislators and offer your area of expertise on upcoming legislative issues.

Your time is precious, and the days seem to fly by. I understand the time you invest in volunteerism in your communities, local bar associations and the OBA is sacrificial. Thank you!

ENDNOTE
1. https://bit.ly/4gHaz5o.

Oklahoma Bar Foundation Announces Scholarship Recipients

THE OKLAHOMA BAR Foundation proudly announces its scholarship and award recipients for the 2024-2025 academic year, recognizing exceptional educational achievement, leadership and community service. These scholarships support students who are dedicated to advancing their legal education. Congratulations to all the recipients!

OBF scholarship recipients are selected by committees from the OCU School of Law, the OU College of Law and the TU College of Law. Law school committees choose from their top candidates who meet the criteria set forth for each scholarship. These awards reflect the OBF's ongoing commitment to developing future legal professionals and ensuring they have the financial support to achieve their goals.

OBF SCHOLARSHIPS AND AWARDS CRITERIA AND HISTORY

- The Partners for Justice Scholarship is awarded to law students from each of Oklahoma's three law schools who have demonstrated high academic standards, the intent to practice law in Oklahoma and a commitment to public service. It was established in 2006 to recognize the OBF's 60 years of service to the legal profession and Oklahoma citizens.
- The Chapman-Rogers Scholarship recognizes an outstanding law student from each of Oklahoma's three law schools. It was established through donations to the OBF from Leta M. Chapman in honor of her Tulsa lawyer and advisor, John Rogers.
- The W.B. Clark Scholarship is awarded to law students from Kay County attending law school in Oklahoma. It was established by Ms. Frances Clark Eubank in honor of her father, W.B. Clark, an esteemed lawyer from Kay County.
- The Maurice H. Merrill Memorial Award recognizes a law student at the OU College of Law who displays an interest in public law. The award was established to honor OU Law professor Dr. Maurice H. Merrill for his outstanding contributions to the legal profession in Oklahoma.
- The Phillips Allen Porta Memorial Award is given to the law student with the highest grade in legal ethics at the OU College of Law. The award was established by OBF Board of Trustees member A. Francis Porta in memory of his son, Phillips Allen Porta.
- The Thomas L. Hieronymus Memorial Award recognizes a law student from the OU College of Law engaged in the study of oil and gas law or other energy and natural resources law. The award was established to honor Woodward lawyer Thomas L. Hieronymus, who served as OBF board president in 1975.

These scholarships play a critical role in supporting the next generation of legal professionals by alleviating financial burdens and encouraging academic excellence. The OBF remains committed to legal education and empowering future leaders in the legal community.

Oklahoma Bar Foundation

2024-2025 Scholarship & Award Recipients

Partners for Justice Scholarship

Scott Hjelm, Jr.
TU School of Law

Brandon Jacobs
OCU School of Law

Dawson Rose
OU School of Law

Chapman-Rogers Scholarship

Wyatt Ball
OU School of Law

Kiyoshi Cruz Juarez
OCU School of Law

Eugene Flynn
TU School of Law

W.B. Clark Scholarship

Caitlin Cannon
OU School of Law

Garrett Coats
OU School of Law

Karly L. Fisher
TU School of Law

Jamie (Lane) Jagosh
OCU School of Law

S. Wade Jameson
TU School of Law

Kayla Patten
OCU School of Law

Maurice H. Merrill Award

Madison Homer
OU School of Law

Phillips Allen Porta Award

Robert Evans
OU School of Law

Thomas L. Hieronymus Award

Mary Keeling
OU School of Law

OKLAHOMA BAR FOUNDATION
Law. Education. Justice.

405.416.7070 | foundation@okbar.org | www.okbarfoundation.org

For Your Information

VOLUNTEER FOR LAW DAY ON MAY 1

Law Day will be celebrated statewide on Thursday, May 1. Ask A Lawyer, as well as other Law Day-related events, will be held across Oklahoma, and volunteers are needed to make the day a success! There is an additional need for Spanish-speaking volunteers in Tulsa and Oklahoma counties for Ask A Lawyer throughout the day. Contact your local Law Day chairperson or county bar president for information on Law Day events and volunteer opportunities in your county. County bar president information can be found at www.okbar.org/cobar. County Law Day chairs, email communications@okbar.org with information regarding your Law Day events. Visit www.okbar.org/lawday for more information.

LHL DISCUSSION GROUPS TO HOST APRIL MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Thursday, April 3, in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Thursday, April 10, in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet Thursday, April 24, at the first-floor conference room of the Oil Center, 2601 NW Expressway.

Each meeting is facilitated by committee members and a licensed mental health professional. The small group discussions are intended to give group leaders and participants the opportunity to ask questions, provide support and share information with fellow bar members to improve their lives – professionally and personally. Visit www.okbar.org/lhl for more information, and look at the OBA events calendar at www.okbar.org/events for upcoming discussion group meeting dates.

CHIEF JUSTICE COLLOQUIUM ON CIVILITY AND ETHICS

The Oklahoma Supreme Court invites you to attend the second annual Oklahoma Chief Justice Colloquium on Civility and Ethics. This year's event, honoring Oklahoma Supreme Court Chief Justice Dustin P. Rowe, will feature guest speaker Baylor University School of Law Professor Leah Jackson Teague. She will speak on the critical role of all generations of lawyers, legal traditions and ethical standards, how to mentor for success and balancing new tech tools with strong ethical responsibility. Register at ok.webcredenza.com.

SAVE THE DATE: OBA DAY AT THE CAPITOL

On Tuesday, March 25, join us for this year's OBA Day at the Capitol. The morning will kick off with speakers covering bills of interest, how to talk to legislators, legislative updates and more. Attendees will then have the opportunity to visit with legislators. Be sure to save the date and keep your eye out for more information on how to register!

LET US FEATURE YOUR WORK

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

SAVE THE DATE FOR THE 2025 SOVEREIGNTY SYMPOSIUM

This year's Sovereignty Symposium will be held June 12-13 at the OKANA Resort in Oklahoma City. The event is presented by the OCU School of Law. Speaker and registration information will be announced soon! Reach out to Jennifer Stevenson for sponsor information and visit www.sovereigntysymposium.com to learn more about the event.

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

Kyle Shifflett has joined the Office of the Oklahoma Attorney General as a deputy general counsel. He received his J.D. from the OU College of Law. During law school, he interned for Oklahoma Supreme Court Justice Yvonne Kauger and remained there after graduation as her staff attorney for 32 years. He served in the chief justice's office from 1997 to 1998. He has received honors such as special recognition from the Oklahoma Supreme Court for his assistance in the move to the Oklahoma Judicial Center, the 2011 Gov. George Nigh Public Service in the Arts Award for his work in the Art in Public Places Committee for the Oklahoma Judicial Center art collection and the Sovereignty Symposium Award for over two decades of work. He taught ethics and legal research and writing at the Oklahoma Judicial Conference and currently serves as adjunct faculty at the OCU School of Law, teaching civil procedure skill sessions.

Preston Sullivan has been named partner at the law firm of Conner & Winters. He is a commercial litigator in the firm's Oklahoma City office, representing companies in contract disputes and various business-related matters. As an associate, he worked for clients in a broad range of industries, including manufacturing, construction, commercial real estate, medical technology and more. He has experience in a variety of contract disputes, including construction defect claims, employment disputes, tortious interference claims, unlawful detainer actions, commercial foreclosures and breach of contract disputes. Mr. Sullivan joined the firm in 2022 after working at a boutique law firm in Oklahoma City. He received his J.D. from the OU College of Law in 2018.

Aimee Majoue has established the Oklahoma City law firm of Majoue Legal Services. Ms. Majoue was previously with Crowe & Dunlevy PC and Steptoe & Johnson PLLC. She practices general civil litigation with an emphasis on administrative and regulatory law, professional liability, products liability, contract disputes and trial practice. Ms. Majoue is also the chief administrative officer and general counsel for City Rescue Mission.

Danny Williams Jr. has joined the law firm of Conner & Winters as an associate in the Tulsa office. He is part of the Corporate and Securities Practice Group, handling complex transactions, mergers and acquisitions, securities compliance and corporate governance for public and private companies. He has experience in the energy and natural resources industry, first as a land representative for ExxonMobil and, most recently, as in-house counsel for Canyon Creek Energy. Mr. Williams received his J.D. from the Loyola University Chicago School of Law, where he was a Pugh Kaufman Scholar and was recognized on the dean's list every semester.

Jennifer Isaacs, **Alyssa LaCourse**, **Tyler Stephens**, **Nick Tricinella** and **Ashley Warshell** have joined the law firm of Hall Estill. Ms. Isaacs is an associate in the firm's litigation practice in the Oklahoma City office. She previously served as an intern for the Oklahoma Supreme Court with Justice James R. Winchester and for the Oklahoma Court of Criminal Appeals. Ms. LaCourse is an associate in the firm's Corporate & Business Services Practice Group in the Tulsa office. She has experience in nonprofit and intellectual property law. While in law school, she served as a legal extern for the Office of the Attorney General. Mr. Stephens is an associate in the firm's Corporate & Business Services Practice Group in the Tulsa office. He represents clients in civil litigation and bankruptcy matters. While in law school, Mr. Stephens served as an associate editor and business manager for the *Tulsa Law Review*. Mr. Tricinella is special counsel in the firm's Oklahoma City office and has extensive experience in corporate tax law, particularly in the energy sector. He advises on major transactions, including acquisitions, divestitures, tax partnerships and bankruptcy matters. He has also provided counsel on tax planning, due diligence and government relations, and he has influenced tax legislation at the federal and state levels. Prior to joining the firm, he served as assistant general counsel at Chesapeake Energy Co. Ms. Warshell is special counsel in the firm's Oklahoma City office, focusing primarily on banking and financial services. She has experience structuring, drafting and negotiating contracts and representing financial institutions in banking and civil litigation matters. She also has expertise in consumer financial

services, law and technology transactions. Prior to joining the firm, she served as senior corporate counsel for Global Payments Inc.

Michael S. Linscott has been selected as managing partner at the law firm of Doerner, Saunders, Daniel & Anderson LLP. He has been with the firm since 2013. Mr. Linscott has 33 years of litigation experience, with an emphasis across several practice areas, including environmental defense, insurance defense, health care, construction and real estate matters. He received his J.D. from the TU College of Law. He has served his local community as a member of the Board of Directors for NatureWorks Inc. and the Tulsa Press Club and as president of the Will Rogers Rotary Club.

KUDOS

Mary Quinn Cooper and **Bradley K. Donnell** have been elected to the McAfee & Taft 2025 Board of Directors. Ms. Cooper is a trial lawyer who serves as national trial counsel for major corporations and regularly defends product liability claims and class actions across the country. She previously co-led the Litigation Practice Group for 10 years and served as an appointed member of the Professional Responsibility Tribunal. Ms. Cooper currently serves as the District 1 commissioner on the Judicial Nominating Commission. Mr. Donnell is a trial lawyer with more than 30 years of experience representing clients in general civil litigation matters with an emphasis on bad faith litigation and disputes involving aviation, construction, product liability and other negligence/tort claims.

J. Frank Wolf III has been recognized as the National Attorney of the Year in Indian Country by the National American Indian Housing Council. He was selected for his 40 years of service to the Choctaw Nation. Mr. Wolf received his J.D. from TU College of Law in 1985.

Michael L. Tinney has been appointed by Gov. Kevin Stitt to the Oklahoma State Board of Education. Mr. Tinney practices in Norman with an emphasis on oil and gas law. He graduated from the OU College of Law in 1983.

HOW TO PLACE AN ANNOUNCEMENT:

The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (*e.g., Super Lawyers, Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing and printed as space permits.

Submit news items to:

Hailey Boyd
Communications Dept.
Oklahoma Bar Association
405-416-7033
barbriefs@okbar.org

Articles for the May issue must be received by April 1.

In Memoriam

Gary C. Bachman of Oklahoma City died Dec. 30. He was born Dec. 9, 1943, in Louisville, Kentucky, and graduated from Midwest City High School in 1961. He attended the University of Central Oklahoma and worked nights at Tinker Air Force Base. He received his J.D. with honors from the OCU School of Law in 1970 and worked at the law firm of Rhodes, Hieronymous, Holloway and Wilson, which later became Holloway, Dobson & Bachman. Mr. Bachman practiced law in Oklahoma City for more than 50 years. He co-founded Zion's Gate International with his wife, served as an Executive Board member of the International Christian Embassy and partnered with several other Christian and Jewish ministries and institutions. Memorial contributions may be made to the Chabad Community Center for Jewish Life and Learning in Oklahoma City.

Gemma Morrison Bennett of Los Alamos, New Mexico, died May 30, 2023. She was born June 22, 1943, and was raised in Georgia. Throughout her life, she worked various jobs, including secretary, train dispatcher, house mother, oil field technician, writer and editor, landlord and patent attorney. Ms. Bennett received her J.D. from the University of Denver Sturm College of Law in 1987. She founded For the Animals, a nonprofit organization that supports Los Alamos County Animal Shelter animals. Memorial contributions may be made to Felines & Friends New Mexico.

Bryan Keith Drummond of Tulsa died June 15, 2024. He was born Feb. 8, 1967, in Great Falls, Montana. He served a two-year mission for the Church of Jesus Christ of Latter-day Saints in Ventura, California. Upon returning, he earned his bachelor's degree at OSU and received his J.D. from the OU College of Law in 1995. Mr. Drummond worked at the law firm of Rosenstein, Fist & Ringold from 1996 until his death. During that time, he became a partner and shareholder, working with his colleagues to represent numerous school districts and municipalities across Oklahoma. Memorial contributions may be made to your local school district to help students in need purchase items like sports gear, coats, shoes, lunch bills, glasses, etc.

Peter Culver Godfrey of Madill died Nov. 26. He was born Sept. 25, 1956. Mr. Godfrey received his J.D. from the OCU School of Law in 1983.

Harvey L. Harmon Jr. of Oklahoma City died Jan. 22. He was born March 6, 1947, and graduated from Harding High School, where he was on the swim and tennis teams. He spent his freshman year at Wesleyan University in Connecticut but transferred to OU his sophomore year, joining many friends in the Phi Gamma Delta fraternity. Mr. Harmon received his J.D. from the OU College of Law in 1971 and began his lifelong practice of law, primarily in contract negotiations. He practiced with several firms, including Kerr/Davis, Lawrence, Ellis and Harmon. He served as general counsel for the Oklahoma Municipal Power Authority and AFS, a small tech company that grew to international scope. He was a member of the Oklahoma Trial Lawyers Association. He always found time to do pro bono work for many of his wife's students and friends.

Samantha Rae Jones of Claremore died Sept. 11. She was born Sept. 20, 1973, in Claremore. Ms. Jones attended school in Oolagah and won two softball state championships as a pitcher. She attended Rogers State College and transferred to Evangel University in Missouri, where she was the first pitching recruit for their new softball team. She graduated from Evangel University with a bachelor's degree in government *cum laude* and received her J.D. from the TU College of Law in 1999. Ms. Jones took on the role of campaign supporter for her husband in his successful bid to become the Oklahoma state representative for District 9. For the next 12 years, she supported him throughout his public service career while balancing her own legal career and family. She worked with the law firm of Carle and Mosier and was an assistant district attorney and title attorney before choosing to stay at home with her family. Memorial contributions may be made to the Will Rogers Memorial Foundation.

Ryan Dean Kiesel of Oklahoma City died Jan. 31. He was born Jan. 15, 1980, in Oklahoma City. Mr. Kiesel was raised in Seminole and graduated from Seminole High School in 1998. He attended OU, where he found his passion for politics. He began working on various campaigns for local

and state candidates, including Rep. Bill Nations, and spent several years as a policy advisor to Sen. Kelly Haney. During the 2000 presidential campaign, he traveled the country as a staffer for Sen. Bill Bradley. Mr. Kiesel received his bachelor's degree in political science in 2002 and his J.D. from the OU College of Law in 2006. During his second year of law school, he won the election to represent Seminole as state representative for House District 28 and served for three terms. Afterward, he served as executive director of the American Civil Liberties Union of Oklahoma from 2011 until 2020. Mr. Kiesel's career included working in private law practice, as an adjunct professor at the OU College of Law and as a lobbyist and consultant for a variety of interests at the state Capitol. For 13 years, his insightful commentary on *This Week in Oklahoma Politics* – a weekly show on KOSU, the local NPR affiliate – offered listeners an honest and incisive look at state and national affairs. Memorial contributions may be made to a college education fund for Oliver and Claire at any BancFirst branch or https://tinyurl.com/KieselMemorialFund.

Jim D. Kutch of Aptos, California, died Dec. 15. He was born Nov. 21, 1935, in Hobart. Mr. Kutch graduated from OU in 1957 and received his J.D. from the OCU School of Law in 1969. He received his certified financial planner designation in 1986 from the College for Financial Planning in Denver. **He began his military service in the U.S. Navy at the Navy Officer Candidate School in Newport, Rhode Island, and then served on the USS Basilone. He attended Fleet Sonar School and finished in the Naval Reserves in Oklahoma in 1972. Mr. Kutch detached from the Navy as a lieutenant.** His career included serving in various leadership positions at Fidelity Bank, American Bank of Commerce, American National Bank of Midwest City and Security Bank of Midwest City. From 1987 to 1995, he practiced at the Oklahoma City law firm of Pate and Payne in the areas of estate planning, elder law, probate and charitable giving. He was the director of capital support and planned giving at OCU from 1995 until his retirement in December 2000. Mr. Kutch was a member of the American Bar Association, the Oklahoma County Bar Association, the Oklahoma City Estate Planning Council and the Registry of CFP Licensed Practitioners. He also served on the boards of several metropolitan civic organizations, including the American Cancer Society, the Chamber of Commerce of South Oklahoma City and Midwest City and several area YMCA branches. He was a member of Mayfair Church of Christ in Oklahoma City for over 30 years and served as a deacon for part of that time.

Ross Nicholas Lillard III of Washington died Jan. 11, 2024. He was born Oct. 6, 1947, in Oklahoma City. Mr. Lillard graduated from Lawton High School and attended OU, where he was a member of the Delta Tau Delta fraternity. **He was commissioned as a second lieutenant in the U.S. Army and served in Vietnam, where he received commendation medals, including two bronze stars.** He received his J.D. from the OCU School of Law in 1975. Mr. Lillard was an assistant to the district attorney in Cleveland County, a defense attorney and a federal prosecutor for the Western District of Oklahoma. He was president of the Cleveland County Bar Association from 1986 to 1987. Later, he received a Director's Award from the U.S. attorney general. Memorial contributions may be made to a charity of your choice.

Patricia Dougherty MacGuigan of Oklahoma City died Dec. 26. She was born Sept. 8, 1939, in Beaver, Pennsylvania. She received her J.D. from the OCU School of Law in 1975. She also held a bachelor's degree from OU and an LL.M. from the University of Virginia. She was an administrative law judge for the Oil and Gas Conservation Division of the Oklahoma Corporation Commission from 2003 to 2021. She served as judge and presiding judge of the Oklahoma Court of Civil Appeals from 1982 to 1991. Earlier in her career, she was an assistant district attorney for Oklahoma County and an oil and gas litigation attorney for the Kerr-McGee Corp. Ms. MacGuigan served as master of the bench of the American Inns of Court XXIII in 1990.

Otis Leo Osborn of Tulsa died March 5, 2024. He was born Oct. 30, 1925, in Newalla. Mr. Osborn graduated from Shawnee High School in 1943. **After high school, he joined the U.S. Navy and was stationed in San Diego, where he served as a pharmacist's mate in the U.S. Naval Hospital**. He earned his bachelor's degree from Oklahoma Baptist University and received his J.D. from the OU College of Law. Mr. Osborn was an OBA member for more than

70 years. He worked with Standard Oil Company, which eventually became Amoco Co., and he remained with them until his retirement in 1985. He was a member of the Asbury Methodist Church, where he was involved in bible study and accountability groups, volunteered in the church library and served as a greeter. Memorial contributions may be made to the Oklahoma Medical Research Foundation.

Annette C. H. Prince of Oklahoma City died Oct. 10. She was born Nov. 3, 1946. Ms. Prince received her J.D. from the OU College of Law.

Jeffrey Lynn Shelton of Seminole died July 15. He was born Aug. 22, 1968, in Odessa, Texas. Mr. Shelton played collegiate baseball and attended OSU for his undergraduate studies. He received his J.D. from the OU College of Law in 1994, where he was a Carl Albert Executive Fellow. After law school, he worked as an attorney for the Oklahoma Tourism and Recreation Department, where he received a governor's accommodation for his legal work. He went on to work as the city attorney for Cromwell and Sasakwa and as a professor at Seminole State College. Mr. Shelton also coached high school football and was the vice commissioner for American Legion Baseball.

Edwina McKee Taylor of Santa Fe, New Mexico, died Jan. 11. She was born Nov. 20, 1952. Ms. Taylor received her J.D. from the OCU School of Law in 1988. Memorial contributions may be made to Listening Horse Therapeutic Riding, Chaplain Joe's Street Outreach, Scott's House or the Equal Justice Initiative.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of District Judge, Office 1, for the Seventh Judicial District, Oklahoma County. This vacancy is created by the retirement of the Honorable Aletia Haynes Timmons, effective March 3, 2025.

To be appointed to Office 1, Seventh Judicial District, one must be a legal resident of Oklahoma County at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms may be obtained online at https://okjnc.com or by contacting Gina Antipov at (405) 556-9673. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, March 21, 2025. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before March 21, 2025, to be deemed timely. Applications should be mailed/delivered to:

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

EDITORIAL CALENDAR

2025 ISSUES

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

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

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

SEPTEMBER
Torts
Editor: Magdalena Way
magda@basslaw.net

OCTOBER
Immigration Law
Editor: Norma Cossio
ngc@mdpllc.com

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

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

2026 ISSUES

JANUARY
Family Law
Editor: Evan Taylor
tayl1256@gmail.com

FEBRUARY
Criminal Law
Editor: Becky Baird
beckyrenebaird@gmail.com

MARCH
Business & Corporate Law
Editor: Magdalena Way
magda@basslaw.net

APRIL
Health Law
Editor: Melissa DeLacerda
melissde@aol.com

MAY
Insurance Law
Editor: Sheila Southard
SheilaSouthard@bbsmlaw.com

AUGUST
Taxation
Editor: Melissa DeLacerda
melissde@aol.com

SEPTEMBER
Civil Procedure & Evidence
Editor: David Youngblood
david@youngbloodatoka.com

OCTOBER
Government & Administrative Law Practice
Editor: Martha Rupp Carter
mruppcarter@yahoo.com

NOVEMBER
Appellate Practice
Editor: Melanie Wilson Rughani
melanie.rughani@crowedunlevy.com

DECEMBER
Law Office Management
Editor: Norma Cossio
ngc@mdpllc.com

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

Classified Ads

SERVICES

Briefs & More – Of Counsel Legal Resources – Since 1992 – Exclusive research and writing. Highest Quality. State, Federal, Appellate, and Trial. Admitted and practiced United States Supreme Court. Dozens of published opinions. Numerous reversals on certiorari. **MaryGaye LeBoeuf, 405-820-3011, marygayelaw@cox.net.**

EXAMINER OF QUESTIONED DOCUMENTS
Board Certified State & Federal Courts
Diplomate - ABFE Former OSBI Agent
Fellow - ACFEI FBI National Academy
Arthur Linville 405-736-1925

PROBATE & HEIR SEARCH SERVICES – Paralegal and Professional Genealogist with 30 years' experience in research offering probate and heirship research services. Please contact Michelle C. Bates at Michelle@Mygenealogyroots.com or (918) 637-5087 to discuss your case and get your research started!

PERFECT LEGAL PLEADINGS works on Microsoft Word and contains automated Oklahoma pleadings and forms for divorce, paternity, probate, guardianship, adoption, real property, civil procedure, criminal procedure, and personal injury. We also provide access to thousands of other state and federal pleadings and forms. PerfectlegalPleadings.org.

Putnam Law Office
INTEGRITY · SERVICE · EXCELLENCE

STRUGGLING WITH UNPAID CLIENT BILLS?

Let us handle your collections so you can focus on practicing law. Specializing in collections for law firms. Contact Putnam Law Office today at 405-849-9149 or email Rita Munoz at Rita@putnamlawoffice.com.

SERVICES

CONSULTING ARBORIST, TREE EXPERT WITNESS, BILL LONG

25 years' experience. Tree damage/ removals, boundary crossing. Statewide and regional.

405-996-0411 | BillLongArborist.com

ELITE ATTORNEY SERVICE
www.eliteattorneyservice.com
405.967.1797

In-Person Court Filings – Elite Attorney Service offers court filings throughout Oklahoma at a fraction of the time and cost of our competitors. Our experts know the local filing requirements for each jurisdiction and will ensure your documents are filed correctly and advance all fees.

Federal Court Courtesy Copies – Printed, bound, and hand-delivered to the Court/Judge as per local rules.

Efficient Process Server Solutions – Our team of experts adeptly handles even the most intricate and challenging service of process assignments with unwavering dedication.

OFFICE SPACE

OFFICE SPACE FOR RENT IN NW OKC/EDMOND. Modern office with shared use of internet access, lobby, and conference room $495-$695 a month. Referrals are likely. First month 50% discount. Call Joy at 405-733-8686.

DOWNTOWN OKC WINDOW OFFICE SPACE AVAILABLE for immediate occupancy. Rental space includes internet, receptionist, parking, and other amenities. Call 405-239-2726 for more information.

POSITIONS AVAILABLE

General Civil Practice Attorney

The Ritchie Rock & Atwood Law Firm is seeking to fill two positions for General Civil Practice Attorneys to join the firm's team in Shawnee, Oklahoma, and Pryor, Oklahoma.

The Ideal Candidate Will Have:

- 2-5 years experience as general civil practice attorney in the practice of law
- Experience in appellate brief writing (preferred not required)
- Experience in jury trial work (preferred not required)
- A willingness to represent the firm as part of the local community
- Relocation to Shawnee/Pryor or an adjoining community
- Join the team as a team player

Your Benefits:

- Competitive compensation commensurate with qualifications
- Retirement plan with company match
- 100% employee health insurance paid by the Firm along with dental, vision and life
- Firm monthly contribution to employee health savings account (HSA)
- Attorney discretion time off. We don't set a limit on vacation time and days off. We don't have a mandatory time in and time off for attorneys. We are professionals. We do what needs done, when it needs done, and we take good care of our clients and maintain expected productivity in billings for the health of the Firm. So long as that is all done, we take off when we want or need to do so to keep a healthy life balance.

To apply, please submit your resume by email to hgerhart@rrmalaw.com. You may also mail a resume to Ritchie, Rock & Atwood Law Firm, P.O. Box 246, Pryor, OK 74362.

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE HIRING FOR EXECUTIVE DIRECTOR

The Oklahoma Indigent Defense System (OIDS) is seeking applicants for our Executive Director position. The Oklahoma Indigent Defense System provides trial, appellate and post-conviction criminal defense services to persons who have been judicially determined to be entitled to legal counsel at State expense.

The Executive Director serves as the chief executive officer for the agency and serves at the pleasure of the agency's Board of Directors per the Indigent Defense Act (Title 22 §1355.4). The Executive Director shall be an attorney who has practiced law for at least four (4) years preceding the appointment and who is licensed to practice law in this state or is eligible to become so licensed within one (1) year of the appointment.

This position functions as the Executive Director of the Oklahoma Indigent Defense System. The position is responsible for planning, organizing, directing, and coordinating services and operations of all divisions, departments, offices, and functions of the Agency to achieve its mission, vision, short- and long-term goals and objectives.

OIDS provides a comprehensive benefits package including:

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

This position is posted until March 20, 2025. To apply, visit our employment page on our website: https://oklahoma.gov/oids/employment.html. For questions, email jobs@oids.ok.gov.

POSITIONS AVAILABLE

THE PAWNEE NATION IS NOW ACCEPTING RESUMES for a Tribal Court Associate Judge. This is a six (6) year appointed position with a compensation per Court Date. For a full list of duties, responsibilities, and requirements and to submit resumes, please contact the Executive Administrative Assistant, Jamie Nelson, at jnelson@pawneenation.org, and/or Acting Executive Director, Brian Kirk, at bkirk@pawneenation.org, or call 918-762-3621. Resume submissions are accepted until the position is filled.

ESTABLISHED PREMIER SMALL TOWN Law Firm is seeking a full or part time Attorney or Legal Intern. Candidates should be a licensed attorney or enrolled in law school, and interested in criminal defense, family law and Native American venues. Interested candidates will have an opportunity to participate in ongoing defense cases and trials in diverse venues. Compensation will depend on experience and/or level of education. Interested candidates should contact Bennett & Gallon PLLC, 918-540-1818.

OIL AND GAS TITLE ATTORNEY WANTED: Our small OKC-based firm is looking for an experienced Oil and Gas Title Attorney. The ideal candidate will have 3+ years' experience in complex HBP title, joint operating agreements, and Oklahoma Corporation Commission Orders. Strong written communication and familiarity with the industry are essential. This position can be in-house or remote. Make your own hours, join a team that prefers a happy life over the big-firm grind, and work with wonderful clients. Excellent performance-based compensation, high origination fees, and a flexible schedule. Reply with resume to: oandgtitle@gmail.com.

BARBER & BARTZ, P.C., AN AV-RATED DOWNTOWN TULSA LAW FIRM, is seeking an attorney looking for new opportunities to practice in a family-friendly work environment. The candidate must have 5-10 years civil litigation experience. This position includes a competitive salary, health insurance, 401K benefits, and performance-based compensation. Experience in business litigation and federal court experience is preferred. Send resume via email to jgere@barberbartz.com.

POSITIONS AVAILABLE

Position: Associate Attorney – Litigation (full-time, on-site)
Location: Oklahoma City, OK or Tulsa, OK
Firm: Rhodes, Hieronymus Law Firm

A long-established AV-rated Oklahoma litigation firm is accepting Associate Attorney candidates for its Tulsa or OKC office. With over 90 years of legal integrity and a competitive compensation package, this is an exceptional place to grow in your career and build professional relationships

As we continue to grow, we are seeking an experienced attorney with **at least 5 years of civil litigation experience (insurance defense preferred)** to join our team.

Key Responsibilities:

- Collaborate with senior attorneys and legal staff to develop and execute case strategies
- Ensure compliance with all legal and ethical standards
- Represent clients in court proceedings, including hearings, mediations, arbitrations, and trials
- Conduct legal research and analysis to develop case strategies
- Draft, review, and file pleadings, motions, and other legal documents
- Manage discovery processes, including drafting and responding to interrogatories, document requests, and depositions

Qualifications:

- Juris Doctor (J.D.) from an accredited law school
- Admission to the Oklahoma Bar and in good standing
- Excellent legal research, writing, and analytical skills
- Strong organizational skills and attention to detail
- Ability to manage multiple cases and meet deadlines in a fast-paced environment
- Extensive knowledge of litigation procedures in Oklahoma state and federal courts
- Proficient use of office systems including MS Office Suite, Juris, Perfect Law or similar document management and time-keeping systems

Base Salary: $70,000 to $80,000

Please send your resume, cover letter, and a writing sample to klewis@rhodesokla.com.

POSITIONS AVAILABLE

THE DISTRICT SIX DISTRICT ATTORNEY'S OFFICE is accepting resumes for the position of Assistant District Attorney. The District is looking to enhance services to its citizens by adding three (3) additional Assistant District Attorneys. The location of the service will be determined based upon the needs of the District, along with the preference of the candidate(s) for the positions. District Six includes the following counties in Southwest Oklahoma: Caddo, Grady, Stephens, and Jefferson. The District is diverse in that it encompasses areas just outside of Oklahoma City south to the Red River as well as west on a portion of I-40 just past the community of Hinton. Communities within the District include Anadarko, Hinton, Tuttle, Bridge Creek, Blanchard, Chickasha, Rush Springs, Marlow, Duncan, Comanche, Waurika, Ryan, and Ringling to name a few municipalities.

Successful candidates, based upon experience level, will be given the opportunity to prosecute a wide variety of cases, including drug offenses, all types of violent crime, child sexual abuse, driving under the influence, domestic abuse, and/or juvenile deprived/delinquent among other types of offenses. The District offers attorneys the opportunity to appear in court on a regular basis, and to appear as lead counsel in a wide variety of jury trials. The successful candidate(s) should desire to appear in trial on a regular basis.

Successful candidates will be rewarded with competitive salaries, holidays off, health insurance, retirement, and other benefits. Salaries will be based upon experience level and location of service.

Interested candidates should forward a resume to Human Resources Director, Karen Boatman at karen.boatman@dac.state.ok.us or District Attorney Jason Hicks at Jason.hicks@dac.state.ok.us.

POSITIONS AVAILABLE

THE UNIVERSITY OF OKLAHOMA, Office of Legal Counsel, seeks an attorney (0-5 years) to fill the role of University Counsel on the Norman campus. Candidates should have experience in all aspects of complex civil litigation, impeccable legal research and writing skills, and the ability to work in a fast-paced environment with minimal supervision. The successful candidate must have an active Oklahoma bar license (and be in good standing) and be admitted to practice law in the United States District Courts for the Western and Northern Districts of Oklahoma or able to be admitted in each within 30 days. Experience with both the Oklahoma Governmental Tort Claims Act and employment law defense is preferred. All applicants must have a license to practice in the State of Oklahoma and a JD from an ABA-accredited law school. For a comprehensive listing of criteria or to apply, go to: https://jobs.ou.edu. The Position requisition number is 250273. The University of Oklahoma is an equal opportunity institution. For more information, please visit http://www.ou.edu/eoo.

ATKINSON, BRITTINGHAM, GLADD, FIASCO & EDMONDS is seeking an associate attorney with zero to five years of experience who is proficient in research and writing. Atkinson, Brittingham, Gladd & Fiasco is primarily a defense litigation firm focusing on general civil trial and appellate practice, insurance defense, medical and legal malpractice, and Native American law. Compensation and benefits package will be commensurate with the applicant's experience. Applicants should submit a resume, writing sample and transcript to Carol J. Allen at callen@abg-oklaw.com.

MID-SIZE TULSA AV, PRIMARILY DEFENSE LITIGATION, FIRM seeks 2-5 (Associate position) year lawyer for our Tulsa office. If interested, please send confidential resume, references, and writing sample to kanderson@tulsalawyer.com. Associates at our firm assist in complex litigation and will meet with clients, witnesses, experts while attending depositions, hearings and all aspects of trial preparation. Drafting of pleadings, discovery and motions with attention to detail are primary responsibilities of associates in our firm. We have offices in Fayetteville, Oklahoma City, with our main office in Tulsa. Salary range: $85,000-$110,000 per year with benefits.

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE SEEKING ATTORNEYS

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

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

Salary for this position starts at $68,700; commensurate with qualifications and agency salary schedule.

OIDS provides a comprehensive benefits package including:

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

Applications must be submitted online. Visit https://oklahoma.gov/oids/employment.html to view job announcements and apply online. This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled. For questions concerning employment, please email Jobs@oids.ok.gov.

If you are a private attorney interested in conflict contract work with our non-capital trial division, please contact Brandon Pointer at Brandon.Pointer@oids.ok.gov or call the agency main phone line at 405-801-2601.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of District Judge, Office 1, for the Twenty-Fourth Judicial District, Creek County. This vacancy is created by the retirement of the Honorable Douglas W. Golden, effective February 1, 2025.

To be appointed to Office 1, for the Twenty-Fourth Judicial District, one must be a legal resident of Creek County at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

This is the SECOND NOTICE OF JUDICIAL VACANCY for the position of District Judge, Office 1, for the Twenty-Fourth Judicial District, Creek County. The FIRST NOTICE OF JUDICIAL VACANCY resulted in only two applications being filed. A minimum of three (3) nominees for this judicial position is required by the Constitution to be sent to the Governor and Chief Justice of the Supreme Court for selection of the next District Judge. (Okla. Const. Art. 7B, Sec. 4)

Application forms may be obtained online at https://okjnc.com or by contacting Gina Antipov at (405) 556-9673. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, March 7, 2025. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before March 7, 2025, to be deemed timely. Applications should be mailed/delivered to:

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

The Tulsa Mockingbird

By Jim T. Priest

I HAPPENED ACROSS A BOOK while searching for volumes on famous trials. You see, I'm a retired trial lawyer and incurably, irresistibly drawn to the courtroom in my head and heart. Both head and heart were impacted by *Oklahoma's Atticus* by Hunter Howe Cates. Perhaps you've read the book, but if, like me, you missed it, I hope you'll be inspired to pick it up. It is the Oklahoma version of *To Kill a Mockingbird*.

In the spring of 1953, Elliot Howe was a recently minted, handsome and articulate part-time public defender in Tulsa. Mr. Howe, who was one-quarter Creek Indian, had not tried many cases when he was assigned the defense of one of the most notable criminal trials of the mid-1950s involving the murder and rape of 11-year-old Phyllis Jean Warren.

His client was accused 21-year-old Buster Youngwolfe, a Cherokee man with a wife and child but no job or standing. Mr. Youngwolfe lived in one of the tar paper shack shanties of north Tulsa and seemed destined for the electric chair.

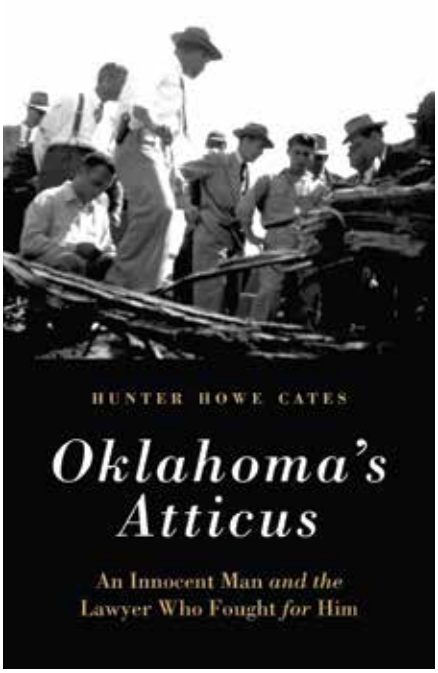
Mr. Youngwolfe had confessed to the crime and even reenacted it in front of police officials and the press. But he had only done so after five relentless days of grueling interrogations without the benefit of much food or sleep. He seemed without hope or help until Elliot Howe took his case.

Author Cates, the grandson of Mr. Howe, does an excellent job of painting contrasts of the time. There was the stark contrast between the oil boom wealth of 1950s Tulsa and the dead-end poverty in north Tulsa. Mr. Howe compares the vitriolic and biased anti-Youngwolfe press coverage of *The Tulsa Tribune* with the professional, even-handed work of the *Tulsa World*. He paints stark differences between the state lawyers: Assistant County Attorney and future Oklahoma Gov. J. Howard Edmondson, alongside powerful County Attorney Robert Wheeler, arrayed against the lone, underpaid, underfunded public defender Mr. Howe.

The inadequate police investigation and their failure to pursue other viable suspects is laid out in compelling terms that would spark a rise of protest and table pounding from modern-day defense lawyers. The tunnel vision and seeming disregard of truth by the County Attorney's Office compound the profound and pathetic failure of the entire justice system. Buster Youngwolfe was, however, no pure innocent. He had a criminal record and was on probation at the time of the crime. He lied about his whereabouts on the night of the murder (he had been out drinking, thereby violating his probation), and those lies deepened police suspicions. He initially confessed his guilt, reenacted the crime and then recanted his confession. He handed his lawyer a double Gordian knot.

But Mr. Howe obtained an acquittal with help from a surprising final expert witness who would never be allowed to testify in court today. The surprise finale is well worth the rising anticipation.

Mr. Howe's conclusion calls on public officials to reopen an investigation into the death of Phyllis Jean Warren. He also encourages readers to support



the Innocence Project in its fight against wrongful convictions and promoting justice reform. He states, "The purpose of this book can be summed up in a single statement: the presumption of innocence ... if injustice can happen to him or her it can happen to you or me. And if it can happen to you or me, none of us is truly free."

Excellent advice to act on and an inspiring book to read.

Mr. Priest is a retired trial lawyer and nonprofit leader who now volunteers for the Innocence Project and serves as a mediator/arbitrator for Dispute Resolution Consultants. He can be reached at jim@sage-counsel.com.

FREE CONFIDENTIAL ASSISTANCE

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

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. Call 800-364-7886 for a free counselor referral.

If you are in crisis or need immediate assistance, call or text 988, Oklahoma's Mental Health Lifeline.

Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

WWW.OKBAR.ORG/LHL