ALSO INSIDE: Annual Meeting • 2025 Solo & Small Firm Conference Highlights
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THE OKLAHOMA BAR
Journal
Volume 96 — No. 6 — August 2025

Labor & Employment

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THE OKLAHOMA BAR Journal

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‘Sometimes You Find Yourself in the Middle of Nowhere, and ...’

By D. Kenyon “Ken” Williams Jr.

“SOMETIMES YOU FIND YOURSELF IN THE middle of nowhere, and sometimes in the middle of nowhere, you find yourself” is one of those unattributed quotes I seem to remember kicking around since the 1970s. Somehow, it seems so very applicable to August.

When January arrives, we often feel so drained that it is hard to think about “doing it all over again.” But we stiffen our resolve and “soldier on” despite the feeling that we need a vacation to recover from November and December. However, the first few months of the year go by in a flash and seem to require an extraordinary amount of time and energy to meet our professional and personal activities. Spring break comes and goes, then Tax Day, and maybe some vacation time is in there somewhere.

Then, as hard as it is to believe, August arrives, and it is the “middle” of the OBA’s year. The first half of our association’s year is over, and we look around and think, “What have we accomplished?” With no hope of comprehensively listing all of the activities and projects that have occurred since Jan. 1, here are some I observed firsthand:

D. Kenyon “Ken” Williams Jr. is a shareholder and director at Hall Estill in Tulsa.
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- The OBA Membership Engagement Committee has been reaching out to our state’s law schools.
- The Lawyers Helping Lawyers Assistance Program continues to support our members.
- The Board of Governors is implementing the strategic plan drafted under Past President Miles Pringle’s leadership.
- The Board of Governors continues to hold some of the monthly meetings and joint receptions in various counties around the state to be inclusive of more members.
- The OBA Legislative Monitoring Committee conducted another successful Legislative Kickoff and Day at the Capitol.
- Leadership Academy is gearing up for its next class, which will begin in January, and applications will open in September.
- Smokeball Bill, a free trust accounting and billing software for our members, was launched.
- The OBA Law Day Committee conducted another successful Law Day and Ask A Lawyer event.
- Statewide celebrations of our members achieving milestone anniversaries were held.
- The Solo & Small Firm Conference was reinvented and held in conjunction with the Oklahoma Judicial Conference.
- The design has been approved and architects have been retained to finalize the plans for long-needed changes to the Oklahoma Bar Center for ease of use, including handicap accessible modifications.

With all that behind us, there is so much to anticipate for the rest of the association’s year! If you ever find yourself saying, “Someone should do something about ___,” here is your chance. Our 2025 Annual Meeting will be held Nov. 6-7 at the Sheraton Oklahoma City Downtown Hotel. Sept. 8 is the deadline for nominations to be submitted for Board of Governors vacancies. Please submit your nominations, and get involved in “doing something about ___.”

It cannot be said too often how proud I am of our members for all that they do. Each one of you, with your own time demands, both professional and personal, still finds time to

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Bar News in a Minute

JUSTICE TRAVIS JETT SWORN IN TO THE OKLAHOMA SUPREME COURT

The Oath Ceremony for Justice Travis Jett was held June 23 at the state Capitol Supreme Court Courtroom, where he was sworn in by Chief Justice Dustin P. Rowe. He was appointed in April to the Oklahoma Supreme Court by Gov. Kevin Stitt, filling the vacancy left by Justice Yvonne Kauger.

Justice Jett is a fourth-generation Oklahoman who grew up in northwest Oklahoma. He practiced with several law firms in Oklahoma City before returning to northwest Oklahoma to practice with Hodgden Law Firm. He previously served as the National FFA Organization president and has served as president of the Woodward County Bar Association since 2023. He received his bachelor's degree from OSU in 2008 and his J.D. from Georgetown Law in 2011. He has been active with the Oklahoma County Bar Association, the Oklahoma City Chapter of the Federal Bar Association, the Federalist Society and the Oklahoma FFA Alumni Council. He is currently active with the Woodward First Methodist Church and lives with his wife and two children in Woodward.

Chief Justice Dustin P. Rowe administers the oath to Justice Travis Jett.

Members of the OBA Board of Governors attend the Oath Ceremony and reception for Justice Jett at the Oklahoma Judicial Center. From left Vice President Richard White Jr., President D. Kenyon Williams Jr., Immediate Past President Miles Pringle, Justice Travis Jett, President-Elect Amber Peckio, Governor John Barbush and Governor Lucas West.

IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, Sept. 1, in observance of Labor Day.

Also, be sure to docket the following events:

- *OBA Women in Law Conference*: Sept. 19 at the Petroleum Club of Oklahoma City
- *Opening Your Law Practice:* Oct. 21 at the Oklahoma Bar Center in Oklahoma City
- *OBA Annual Meeting:* Nov. 6-7 at the Sheraton Oklahoma City Downtown Hotel

SAVE THE DATE: OBA WOMEN IN LAW CONFERENCE

The OBA Women in Law Conference and Mona Salyer Lambird Spotlight Awards Luncheon will be held Friday, Sept. 19, at the Petroleum Club of Oklahoma City. This year's guest speaker is artist DG Smalling, presenting Operation Lady Justice. Registration and more information will be available soon. Visit www.okbar.org/wil for updates.

DANA J. HADA APPOINTED ASSOCIATE DISTRICT JUDGE FOR CUSTER COUNTY

Gov. Stitt recently announced the appointment of Dana J. Hada as associate district judge for Custer County. Judge Hada owns and operates Dana Hada Law LLC and is affiliated with the Barney Law Office in Weatherford, where her practice focuses on family law matters, including divorce, paternity, guardianships, adoptions and juvenile cases. She also serves as the assistant district attorney for Dewey County. Additionally, she represents the town of Shattuck as the municipal attorney and the town of Arnett as the municipal judge. She teaches the legal issues course for the CLEET program at Southwestern Oklahoma State University and serves as an associate bar examiner for the OBA. She served as president of the Custer County Bar Association in 2018. Originally from Indiana, Judge Hada earned her bachelor's degree in psychology and criminal justice from Olivet Nazarene University in 2001 and received her J.D. from Notre Dame Law School in 2004.

ROBERT J. GETCHELL APPOINTED DISTRICT JUDGE FOR 24TH JUDICIAL DISTRICT

On July 1, Gov. Stitt announced the appointment of Robert J. Getchell as district judge for Office 1 of the 24th Judicial District, serving Creek County. Judge Getchell is a shareholder at GableGotwals and has almost 40 years of legal experience. Having spent 20 years as a staff attorney and general counsel for abstract and title companies, Judge Getchell focused on every area of transactional real estate. He recently concluded seven years of service on the Oklahoma Abstractors Board, including serving a term as chairman. Judge Getchell earned both a Bachelor of Arts in history in 1982 and his J.D. from Oral Roberts University in 1985. He and his wife have lived in the Tulsa area for more than 46 years and have raised eight children between them.

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.

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.

CHIEF JUSTICE COLLOQUIUM ON CIVILITY AND ETHICS

The Oklahoma Supreme Court's Second Annual Oklahoma Chief Justice Colloquium on Civility and Ethics was held May 6 at the Oklahoma Judicial Center. The guest speaker for the event was Professor Leah Witcher Jackson Teague from Baylor Law School. She spoke on the critical role of every generation of lawyers, legal traditions and ethical standards, how to mentor for success and balancing new tech tools with strong ethical responsibility.

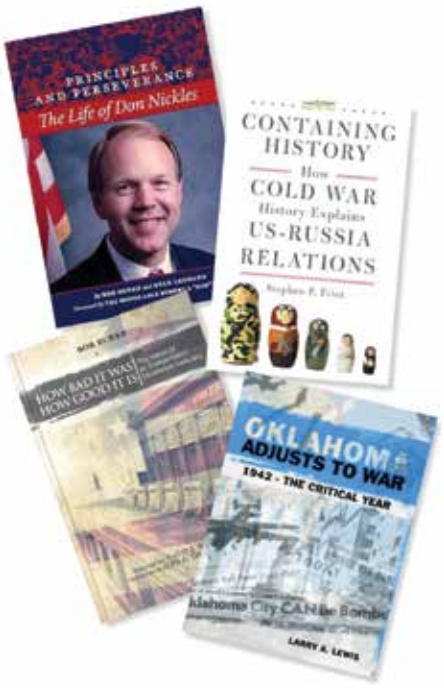
Justice M. John Kane IV presents Professor Leah Witcher Jackson Teague with a framed print of his original photo of a scissor-tailed flycatcher.

From left OBA President D. Kenyon Williams Jr., Justice Dana Kuehn, Professor Leah Witcher Jackson Teague, OBA Executive Director Janet Johnson, Justice Noma Gurich and Justice M. John Kane IV

RYAN H. PITTS SWORN IN AS SPECIAL JUDGE IN SEMINOLE AND HUGHES COUNTIES

Ryan H. Pitts has been sworn in as special judge of Seminole and Hughes counties.

Judge Pitts graduated from Comanche High School in 2003 and obtained his bachelor's and master's degrees from OU and his J.D. from the OCU School of Law. He previously worked for Harold Heath Law Offices in Holdenville before opening his own practice, which he had until April. Judge Pitts lives in Wewoka with his wife and daughters.



PUBLISHED OKLAHOMA LAWYER AUTHORS SOUGHT FOR BOOK COLLECTION PROJECT

Have you authored a published book, or do you know an Oklahoma lawyer who has? Your books are in demand! Published works by Oklahoma attorney authors are being collected for a project to benefit the Oklahoma County Law Library. Please contact Bill Sullivan at 405-795-1206 or by email at billsullivan@cox.net to add your book to the growing collection of nearly 80 books so far.

LHL DISCUSSION GROUP HOSTS SEPTEMBER MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Sept. 4 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Sept. 11 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet Sept. 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 keep an eye on the OBA events calendar at www.okbar.org/events for upcoming discussion group meeting dates.

JUDICIAL NOMINATING COMMISSION ELECTION RESULTS ANNOUNCED

Trace Cole Sherrill

Steven L. Stice

Two Oklahoma attorneys were elected to serve as new members of the Oklahoma Judicial Nominating Commission. Trace Cole Sherrill of Durant and Steven L. Stice of Norman will each serve six-year terms on the 15-member commission, with terms expiring in 2031. Mr. Sherrill was elected to serve as the District 3 commissioner, which is composed of 22 counties in the eastern and southeastern parts of the state. Mr. Stice was elected to serve District 4, which is composed of 13 counties in the western and southwestern parts of the state, along with a portion of Oklahoma County, as those congressional districts existed in 1967. To read more about the new members or to learn more about the Judicial Nominating Commission, visit www.okbar.org/jnc.

JENKS HIGH SCHOOL PLACES SIXTH IN THE NATIONAL MOCK TRIAL CHAMPIONSHIPS

Congratulations to Jenks High School Team Legal Lions for placing sixth in the National High School Mock Trial Championship contest. The team traveled to Phoenix in May for the contest.

OBA member Mike Horn (back row, second from left) served as the attorney coach for the team alongside assistant coach Dr. Dustin McCrackin (right).

When Harassment Crosses a Line: Exploring the Trafficking Victims Protection Act as a Remedy in the Workplace

By Katherine Mazaheri and Troy Norred

PICTURE A YOUNG ASSOCIATE AT A PRESTIGIOUS FIRM, eager to climb the professional ladder, yet suddenly cornered by a chilling ultimatum: comply with the supervisor's escalating sexual demands or risk derailing a budding career. After enduring repeated, unwelcome advances and veiled threats about job security, the pressure escalates – the supervisor demands explicit sexual favors in exchange for the employee keeping their role. Trapped between ambition and abuse, the employee faces a dilemma no employee should ever encounter. While Title VII of the Civil Rights Act of 1964 addresses sexual harassment, extreme cases like this often expose its limitations. For Oklahoma attorneys navigating such harrowing scenarios, it is crucial to recognize that a less conventional but potent tool, the federal Trafficking Victims Protection Act (TVPA), may offer a powerful civil remedy where traditional employment protections fall short.

THE LIMITS OF TITLE VII IN EXTREME HARASSMENT CASES

Title VII of the Civil Rights Act of 1964 remains the primary vehicle for addressing sexual harassment in employment.[1] It prohibits employers from discriminating "because of ... sex," which courts have long interpreted to include severe or pervasive sexual harassment.[2, 3] Oklahoma's parallel law, the Oklahoma Anti-Discrimination Act (OADA), likewise, forbids sexual harassment.[4]

However, Title VII and the OADA have well-known limitations. For one, Title VII applies only to employers with 15 or more employees, leaving some workers unprotected.[5] Additionally, Title VII does not impose personal liability on individual harassers – only the employer entity can typically be sued and, then, only if the harassment occurred during the scope of employment or the employer was negligent in controlling the workplace.[6] This means a predator supervisor might evade personal civil accountability under Title VII.

Even when Title VII applies, its remedies are constrained. Successful plaintiffs are limited to capped damages (up to $300,000 in combined punitive and compensatory damages for large employers) and equitable relief.[7] These caps can pale in comparison to the egregiousness of some conduct.

Tort law might seem to fill the gap by allowing suits for assault,

battery or intentional infliction of emotional distress (IIED). In theory, a victim of workplace sexual assault could sue their harasser (and even the employer under respondeat superior or negligence theories) for battery or IIED. Oklahoma recognizes IIED (also called the tort of outrage), but the threshold is notoriously high. The *Restatement (Second) of Torts* §46 requires "extreme and outrageous" conduct exceeding "all possible bounds of decency" – behavior "atrocious, and utterly intolerable in a civilized community."[8, 9] Many forms of harassment, especially nonphysical but highly coercive behavior, may not clearly meet this demanding standard as interpreted by the courts.

Moreover, if the harm is deemed to have arisen out of employment, Oklahoma's workers' compensation exclusivity could potentially bar some tort claims against the employer.[10] In short, neither Title VII nor traditional tort remedies have been a perfect fit for certain extreme workplace sexual misconduct scenarios – particularly those involving explicit coercion by a supervisor.

AN OVERVIEW OF THE TVPA'S CIVIL REMEDY: SCOPE AND LIMITS

Congress originally addressed sexual exploitation through criminal laws. The TVPA was enacted in 2000 primarily as a criminal statute targeting human trafficking and forced labor. The TVPA and its subsequent reauthorizations criminalized using "force, fraud, or coercion" to compel labor or commercial sex acts.[11]

Importantly, in 2003, Congress created a civil cause of action for victims of these crimes. Under 18 U.S.C. §1595(a), "An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator ... in an appropriate district court of the United States and may recover damages and reasonable attorneys' fees."[12] In other words, victims of conduct that constitutes forced labor or sex trafficking under the TVPA can sue their perpetrators (and even certain third parties who benefited from the exploitation) for damages.

Congress has also provided a generous statute of limitations: Victims have up to 10 years to file civil suits under the TVPA (or even longer in cases of minor victims).[13] By contrast, Title VII claims must be acted upon within months, not years.[14]

ACCESSIBLE EXAMPLES: THE *MCMAHON* CASE, THE *SEAN 'DIDDY' COMBS* CASE AND THE EXPANDING REACH OF THE TVPA

Recent litigation underscores the judiciary's growing willingness to apply the TVPA in contexts of professional exploitation. In *Grant v. World Wrestling Entertainment, Inc.*, a federal case filed in the District of Connecticut, the plaintiff, Janel Grant, alleged that WWE executive Vince McMahon and others violated the TVPA, 18 U.S.C. §§1591(a) and 1595(a), by coercing her into sexual acts under threat of professional harm and reputational ruin.[15]

Ms. Grant's complaint describes a sustained pattern of manipulation, wherein Mr. McMahon allegedly used his authority within WWE to initiate a sexual relationship with Ms. Grant, compelling her through psychological coercion and economic dependence. She was allegedly offered employment and career advancement in exchange for sex and later pressured to sign a nondisclosure agreement under circumstances she contends were coercive. The allegations include threats to her career, implicit and explicit, and describe how noncompliance resulted in retaliatory actions and isolation within the workplace.[16]

Although the court has not yet ruled on the merits, the case illustrates key principles: that a "commercial sex act" under the TVPA includes any sex act exchanged for "anything of value," such as employment, career access or financial security and that "coercion" encompasses psychological manipulation, threats of serious harm and abuse of legal or economic power, as broadly defined under §1591(e)(2).

Grant reinforces the core argument that TVPA protections can and do extend beyond conventional trafficking contexts and can encompass exploitative workplace dynamics where power imbalances are used to override individual autonomy.

For practitioners, *Grant* demonstrates how courts are increasingly attuned to the realities of modern workplace exploitation. When an executive uses professional leverage, implicit threats or reputational control to compel sexual conduct, such actions may satisfy the statutory requirements for sex trafficking under federal law.

In the news today, we've seen the litigation against Sean "Diddy" Combs provide a compelling real-world example of how the TVPA can be deployed to address coercive sexual exploitation in ostensibly professional or entertainment-related settings. Mr. Combs is

Recent litigation underscores the judiciary's growing willingness to apply the TVPA in contexts of professional exploitation.

reportedly under investigation for a range of potential violations, including sex trafficking under 18 U.S.C. §1591, racketeering under the Racketeer Influenced and Corrupt Organizations Act and transportation for the purpose of prostitution under the Mann Act. Authorities allege that for nearly two decades, Mr. Combs used his business empire, including music and fashion ventures, as a front for orchestrating events involving coerced sexual acts. These gatherings, described by insiders and plaintiffs as "freak-offs," allegedly involved the use of drugs, intimidation and implied career rewards to induce compliance from young women and associates.[17]

A pivotal figure in the legal actions against Mr. Combs is singer Casandra "Cassie" Ventura, his former partner. In November 2023, Ms. Ventura filed a civil suit under New York's Adult Survivors Act, alleging that Mr. Combs subjected her to over a decade of physical abuse, rape and sex trafficking, including forcing her to engage in sexual acts with male prostitutes while he filmed the encounters.[18] Though the case settled within a day, Ms. Ventura's allegations catalyzed broader scrutiny of Mr. Combs' conduct and emboldened other alleged victims to come forward. The Department of Homeland Security subsequently executed raids on Mr. Combs' residences in Los Angeles and Miami in March 2024 as part of a broader sex trafficking investigation.[19]

The federal nature of the investigation underscores the relevance of the TVPA in cases involving psychological coercion, abuse of power and manipulative inducement rather than overt physical restraint. The statute defines sex trafficking to include knowingly recruiting, enticing, harboring, transporting or obtaining a person for a commercial sex act by means of force, fraud or coercion.[20] A "commercial sex act" is any sex act on account of which anything of value is given to or received by any person.[21] In the allegations against Mr. Combs, career advancement, lifestyle access and threats of reputational or physical harm were allegedly used to compel sexual compliance – conduct that may meet the statutory threshold.

Mr. Combs' legal team has publicly argued that any sexual conduct was consensual and part of a consensual adult lifestyle. However, the prosecution and plaintiffs maintain that the cumulative pattern of threats, substance control and economic manipulation vitiated any real consent, aligning the conduct with the TVPA's coercion-based framework.

While the events in question may appear sensational due to their celebrity context, the fact pattern mirrors many workplace sexual exploitation cases: An individual in a position of overwhelming professional or financial power allegedly uses that leverage to compel sexual acts under duress. Just as an employer who conditions job retention on sexual compliance exploits their authority in a potentially trafficked context, so too does a public figure who allegedly trades career opportunities for coerced sex acts. The *Combs* case, therefore, stands as a cautionary exemplar of how the TVPA is not limited to human smuggling or underground prostitution rings – it is equally applicable in professional and entertainment sectors when coercion and power abuse are present.

For attorneys, particularly those representing victims of coercive sexual conduct in employer-subordinate or mentor-mentee relationships, the ongoing legal proceedings against Mr. Combs demonstrate the importance of considering the TVPA as a viable

remedy. Where Title VII or state civil rights statutes might fall short due to limitations on individual liability, damages caps or employer size thresholds, the TVPA provides a powerful federal civil tool to confront and redress the exploitation of vulnerable persons under color of authority.

A NOTE ON THE OUTCOME OF *UNITED STATES V. COMBS*, 1:24-CR-00542 (S.D.N.Y.)

Although a Manhattan jury acquitted Mr. Combs of sex trafficking and racketeering conspiracy, it convicted him on two counts of transportation to engage in prostitution.[22] These criminal convictions may play a significant role in the outcome of the many civil lawsuits still pending against him. Although a Manhattan jury acquitted him of sex trafficking and racketeering conspiracy, it convicted him on two counts of transportation to engage in prostitution.

Legal analysts say this result could aid civil plaintiffs. As trial lawyer Mark Zauderer told Forbes, the criminal trial likely gave civil litigants a roadmap to witnesses and helpful evidence.[23] Even though the most serious charges did not result in convictions, the prostitution-related counts could still support claims of sexual abuse or trafficking if the same evidence is involved. This is especially true because civil cases only require proof by a preponderance of the evidence, a far lower standard than the requirement of proof beyond a reasonable doubt in criminal trials. In civil court, if he chooses not to testify, that silence may be viewed unfavorably by jurors. That is not permitted in a criminal trial.

Although the acquittals may dissuade some potential plaintiffs, Mr. Combs still faces numerous lawsuits involving allegations of sexual misconduct, some dating back decades and including claims brought by minors at the time of the alleged abuse. Plaintiffs range from celebrities, such as Dawn Richard and producer Rodney "Lil Rod" Jones, to previously unknown individuals who accuse Mr. Combs of acts including drugging, rape, physical abuse and emotional torment. Several suits were filed just before or during the final days of the criminal proceedings. Taken together, these cases show that Mr. Combs remains vulnerable to substantial legal consequences on the civil side, even while the criminal verdicts were mixed.

SCOPE: WHAT KINDS OF WORKPLACE ABUSE FALL UNDER THE TVPA?

Two core prohibitions are most relevant: forced labor (18 U.S.C. §1589) and sex trafficking (18 U.S.C. §1591). Forced labor includes providing or obtaining a person's labor or services through threats, harm, restraint or abuse of law or legal process (or any scheme intended to coerce through fear).[24] Sex trafficking, as relevant to adult victims, is recruiting or coercing a person to engage in a commercial sex act by means of force, fraud or coercion.[25]

A critical definition in the sex trafficking context is "commercial sex act," defined as any sex act on account of which anything of value is given to or received by any person.[26] Courts have interpreted that term broadly – for instance, a coerced sexual encounter provided in exchange for continued employment or a job benefit can qualify as a "commercial sex act" under the statute.[27]

Thus, if a supervisor demands sexual acts as a condition of employment (*quid pro quo* harassment in its most extreme form) and uses threats or intimidation to enforce that demand, the elements of a TVPA sex trafficking claim may be met. The same facts could also implicate forced labor since the victim is being compelled to "provide [sexual] services" through threats.

It is important to note that the TVPA is not a catchall for any workplace harassment. The statute will not cover ordinary hostile work environment claims or boorish behavior lacking the required

Finally, one should recognize that the TVPA's civil cause of action was not available at all until 2003. Earlier victims of workplace sexual exploitation had no option of bringing a trafficking-based civil claim.

coercion. The conduct must rise to a level of serious compulsion or abuse of power. For example, verbal harassment or unwelcome compliments, without more, would remain solely a Title VII matter. The TVPA's civil remedy is available only to victims of crimes defined in the anti-trafficking chapter of the U.S. Code.

In practice, application of the TVPA in employment contexts requires that the misconduct rise to the level of forced labor or commercial sex acts obtained through force, fraud or coercion. Unlike Title VII, which may impose liability even where conduct is ostensibly welcome but tied to *quid pro quo* propositions, the TVPA focuses on situations where the victim lacked real autonomy or meaningful choice due to coercive pressures. Thus, the statute's reach is confined to extreme, exploitative circumstances ranging from the dramatic but realistic example that opened this article to allegations akin to the *Combs* case or less visible but equally coercive dynamics, such as threats of deportation, serious reputational harm or manipulation of immigration status.

LIMITATIONS: PRACTITIONERS SHOULD ALSO UNDERSTAND THE LIMITS AND PROCEDURAL NUANCES OF TVPA CIVIL ACTIONS

A notable provision is that if a criminal investigation or prosecution related to the same conduct is underway, a civil TVPA suit must be stayed at the government's request.[28] The statute mandates a stay "during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." This is a valuable coordination mechanism that prevents a civil lawsuit from interfering with a criminal human trafficking prosecution, but it can delay the civil case for an extended period.

In the opening hypothetical, if prosecutors charged the supervisor under a trafficking statute, the assistant's civil suit would pause until the criminal case concludes. Additionally, while the TVPA allows suits against individuals (unlike Title VII), collecting a judgment from an individual perpetrator may be difficult if they lack assets. The risk of a perpetrator being judgment-proof is a practical consideration.

However, the TVPA also permits suing those who "knowingly benefit" from a trafficking venture.[29] This can include companies or employers in some circumstances. For instance, an employer who turns a blind eye to a manager's coerced sex-for-jobs scheme could potentially face liability as benefiting from the labor or commercial sex obtained. This is an emerging and complex area, essentially a form of vicarious liability, and courts are still grappling with the contours of "knowing benefit" in the employment context.

The TVPA is made much more potent when combined with a permissive statute of limitations, particularly for civil actions related to sexual abuse and other sexual misconduct. It was thanks to New York's Adult Survivor's Act, for example, that Cassie Ventura was able to bring her case against Sean Combs; the act established a one-year period (Nov. 24, 2023, to Nov. 24, 2024) during which adult survivors of sexual abuse could file civil lawsuits regardless of when the abuse actually occurred. Unfortunately, Oklahoma's statute of limitations for civil actions involving sex abuse is relatively short; 12 O.S. §95 allows for the maintenance of such lawsuits for only two years after the act or, for situations where the victim's discovery of the abuse was delayed, two years from the date the abuse was actually discovered *or* from the date that the abuse should reasonably have been discovered. While these limitations persist in Oklahoma for civil cases, encouraging progress has been made in the criminal law space.[30]

Finally, one should recognize that the TVPA's civil cause of action was not available at all until 2003. Earlier victims of workplace sexual exploitation had no option of bringing a trafficking-based civil claim. Even today, not every provision of the anti-trafficking laws gives rise to a private civil claim for damages. For example, one federal court noted that the TVPA's prohibition on obstruction of trafficking enforcement (18 U.S.C. §1591(d)) does not itself create a private cause of action for victims. The court reasoned that the "victim" of an obstruction offense is the government, not the individual trafficked, and thus, a private plaintiff cannot sue under §1591(d).[31]

Such nuances aside, the core offenses of forced labor and sex trafficking do plainly confer civil causes of action to victims through §1595. Congress has steadily expanded – not contracted – the TVPA's reach over time, including eliminating any statute of limitations for trafficking civil claims by younger victims.[32]

THE TREND TOWARD EMPOWERING VICTIMS: RECOGNIZING HUMAN TRAFFICKING IN THE WORKPLACE

The evolving legal landscape reflects a growing recognition that human trafficking can manifest in unexpected forms, including within seemingly ordinary workplaces. The application of the TVPA in employment contexts underscores this shift.

USING THE TVPA IN PRACTICE: CASE EXAMPLES AND STRATEGIES

Several recent cases illustrate the applicability of the TVPA to workplace abuse, challenging the notion that invoking this law constitutes an overreach.

In *Adia v. Grandeur Management, Inc.*, the plaintiff, a Filipino national working at an American hotel under an H-2B guestworker visa, alleged that his employer threatened to revoke his visa sponsorship when he attempted to resign due to mistreatment. This threat of deportation coerced him into continued employment. The 2nd Circuit vacated the district court's dismissal of Mr. Adia's TVPA claims, holding that the plaintiff plausibly stated violations of the TVPA, as the employer's threats constituted psychological coercion through abuse of legal process.[33]

This case demonstrates that courts are willing to interpret "forced labor" under the TVPA to include psychological coercion and threats of legal harm in employment settings. By analogy, threats to terminate employment or damage an individual's career unless they submit to sexual demands could similarly amount to coercion, compelling them to "provide services" – essentially, forced labor of a sexual nature.

On the sexual exploitation front, the TVPA has been used in high-profile litigation against Harvey Weinstein. In *Geiss v. Weinstein Company Holdings LLC*, a group of women alleged that Mr. Weinstein and others engaged in a sex trafficking venture by luring aspiring actresses to hotels under false pretenses and then sexually assaulting them. The court allowed the TVPA sex trafficking claims to proceed, finding that the plaintiffs plausibly alleged that Mr. Weinstein's conduct involved "commercial sex acts" exchanged for promised career advancement.[34]

The court recognized that offering professional benefits in exchange for sex, coupled with intimidation to obtain compliance, transforms what might appear to be personal misconduct into a form of sex trafficking. This reasoning applies not only to Hollywood producers but also to overreaching supervisors in various workplaces.

Another recent example is *Doe v. Fitzgerald*, where 10 women alleged that a nightclub owner trafficked them or facilitated their abuse in connection with the broader Nygard enterprise.[35] The court allowed some TVPA claims to proceed but dismissed others for failing to show a commercial sex act or the defendant's knowledge of coercion. The case lends further support to the proposition that TVPA civil suits are becoming integral to litigation strategies in sexual abuse cases.

Legal scholars have observed that employing trafficking laws in such contexts "reenvisions" gender-based abuse cases, enabling creative remedies where traditional approaches have fallen short.

REBUTTING THE CRITIQUES

Critics argue that extending the TVPA to cover workplace harassment blurs the line between genuine human trafficking and lesser misconduct, potentially diluting the term's meaning.[36] However, the TVPA's stringent requirements of force, threats or coercion inherently exclude ordinary harassment. The law targets only egregious conduct.

Practitioners can reassure courts that plaintiffs must still prove serious wrongdoing, such as intentional coercion, and that jury instructions in TVPA cases rigorously reflect these elements. Moreover, Congress intended the TVPA to have a broad reach in combating exploitation. As noted in *Adia*, the statute addresses coercion through abuse of legal processes and other subtle forms of force, not just physical restraint.

The existence of a workplace relationship should not immunize exploitative conduct; rather, the inherent power imbalance is precisely what traffickers often exploit. Using the TVPA in appropriate cases supplements Title VII, providing a pathway to hold individual wrongdoers liable and obtain damages commensurate with the harm in situations where Title VII is insufficient.

PRACTICAL IMPLICATIONS FOR OKLAHOMA ATTORNEYS

For attorneys in Oklahoma, the emergence of TVPA civil litigation presents both opportunities and responsibilities. It is crucial to screen cases for elements indicating coercion or forced conduct. If a client's sexual harassment narrative includes explicit threats, physical intimidation or abuse of legal or financial vulnerabilities, a TVPA claim may be viable.

This approach is particularly pertinent when the employer is not covered by Title VII due to size or when seeking to hold an individual perpetrator personally accountable. Including a TVPA count in a complaint can significantly alter the case's dynamics, introducing the potential for uncapped damages and attorney fee recovery and exerting pressure on individual defendants beyond what Title VII claims typically achieve.

Coordination with criminal authorities is also essential. Due to the mandatory stay provision under 18 U.S.C. §1595(b)(1), plaintiffs' lawyers should assess whether law enforcement is investigating the matter. Filing a civil suit promptly could spur law enforcement interest; conversely, engaging with prosecutors first may better serve the client's long-term interests. Notably, a stayed case is not a lost case – following a criminal conviction, many issues may be collaterally estopped in favor of the victim in the civil suit.

Understanding potential defenses is equally important. Defense counsel should recognize that motions to dismiss well-pleaded TVPA claims are challenging if the facts allege coercion. However, arguments may be made regarding whether the alleged misconduct falls outside the TVPA's scope, such as asserting that no "commercial sex act" was involved or that the plaintiff had feasible alternatives and was not truly compelled. These arguments hinge on specific facts.

Consent obtained through coercion is not a valid defense under the TVPA, which explicitly targets situations where apparent consent is nullified by fear. Employers facing TVPA claims for a manager's conduct may explore vicarious liability defenses, arguing that they did not "knowingly benefit" from a trafficking venture. Plaintiffs may counter that retaining a productive employee through illicit coercion constitutes a benefit to the enterprise. This area of law is developing, and Oklahoma courts have limited precedent, necessitating analogies from federal cases nationwide.

Ethical and counseling considerations are also in play. Not every victim of sexual harassment will be comfortable labeling their experience as "trafficking" – a term with heavy connotations. It is critical to explain the options to clients: A Title VII claim can be pursued administratively and might settle quietly; a TVPA claim is a federal lawsuit alleging a form of modern slavery or sex trafficking. For some clients, particularly those who have suffered truly coercive abuse, framing it as trafficking can be empowering and just. For others, it might feel like overreach or attract unwanted attention. The client's comfort level and goals should guide the decision.

From a remedial perspective, the TVPA's allowance of attorney fees and uncapped damages can also enable representation of clients whose cases might be economically unfeasible under Title VII alone, such as those with limited wage loss but significant emotional harm.

LEVERAGING THE TVPA AS A STRATEGIC SUPPLEMENT IN WORKPLACE ABUSE CASES

Oklahoma's legal community should recognize the evolving landscape of sexual harassment law. The rise in sexual harassment charges – over 7,700 filed with the Equal Employment Opportunity Commission (EEOC) in fiscal year 2023, a 25% increase from the prior year – indicates that victims are increasingly coming forward. In Oklahoma, numerous such charges are filed annually, and recent high-profile EEOC lawsuits highlight a persistent problem across industries.

Title VII enforcement remains vital in addressing "ordinary" harassment cases. And in

Oklahoma, it is important to remember the versatility of the *"Burk"* tort, a feature unique to Oklahoma's jurisprudential landscape that allows for an employee who has faced termination against a clear articulation of public policy.[37] *Burk* has been explicitly relied upon when an employee was constructively terminated after being subjected to *quid pro quo* sexual harassment.[38] Of course, since *Burk* relies on the termination of the employment relationship, it would not be applicable to ongoing sexual coercion or to other kinds of adverse employment actions (demotions, reassignments, project exclusion) within an employment relationship defined by sexual harassment. For such cases, the TVPA offers a powerful civil remedy that should not be overlooked.

By incorporating TVPA claims where appropriate, attorneys can hold wrongdoers directly accountable, secure fuller justice for clients and send a strong deterrent message. A savvy practitioner will carefully assess which cases merit this approach, ensuring the facts align with the statute and the client's objectives support a potentially more aggressive litigation stance. When these elements converge, the TVPA can bridge the remedial gap left by Title VII, ensuring that no victim of workplace sexual exploitation is left without a viable path to justice.

ABOUT THE AUTHORS

Katherine Mazaheri is the founder and managing attorney of Mazaheri Law Firm, a team of trial attorneys who have gained a reputation for taking on cases that attack various social injustices and help families in crisis. She is the current OBA Labor and Employment Law Section chair, chair of the OCU School of Law Alumni Association and a member of the Oklahoma County Bar Association. She often mentors law students and new lawyers on employment litigation, sexual harassment and other Title VII best practices.

Troy Norred is a new associate attorney practicing employment, family and civil defense law with Mazaheri Law Firm. He is a member of the OCU School of Law spring 2024 class and served as an assistant resource editor of the *Oklahoma City University Law Review*. His practice is built around a commitment to simplifying the complex for his clients, as well as the foundational principle that justice should always be accessible.

ENDNOTES

1. "Sexual Harassment in the Workplace Initiative." U.S. Department of Justice Civil Rights Division website. http://bit.ly/4lpT1gZ. Accessed April 7, 2025.
2. 42 U.S.C. §2000e-2(a).
3. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64-67 (1986).
4. Okla. Stat. tit. 25, §§1101-1706.
5. *See* 42 U.S.C. §2000e(b).
6. *See Miller v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587-88 (9th Cir. 1993).
7. *See* 42 U.S.C. §1981a(b)(3).
8. *See Restatement (Second) of Torts* §46 cmt. d (Am. L. Inst. 1965).
9. *See also Eddy v. Brown*, 715 P.2d 74, 77 (Okla. 1986).
10. *See* Okla. Stat. tit. 85A, §5(A).
11. *See* 18 U.S.C. §§1589, 1591.
12. *See* 18 U.S.C. §1595(a).
13. *See* 18 U.S.C. §1595(c).
14. *See* 42 U.S.C. §2000e-5(e)(1).
15. *See Grant v. World Wrestling Entertainment, Inc.,* No. 3.24-cv-00090 (D. Conn. filed Jan. 25, 2024).
16. *Id.*
17. *See* Joe Coscarelli, "Diddy Faces Federal Investigation in Multiple States," *The New York Times*, March 26, 2024; *See also* "Sean Combs Accused of Rape and Human Trafficking in New Lawsuit," AP News, Nov. 16, 2023.
18. *See* Complaint, *Ventura v. Combs*, No. 953543/2023 (N.Y. Sup. Ct. Nov. 16, 2023).
19. *See* Shawn Cohen and Emily Crane, "Homeland Security Raids Diddy's Homes in Federal Sex Trafficking Probe," "Page Six," March 25, 2024.
20. *See* 18 U.S.C. §1591(a).
21. *See Id.* §1591(e)(3).
22. *See* Jack Queen, "Sean 'Diddy' Combs to Be Sentenced on October 3," Reuters (July 8, 2025, 1:55 p.m. CDT), https://bit.ly/4eWXupq. Accessed July 9, 2025.
23. *See* Conor Murray, "Here's How Sean 'Diddy' Combs' Criminal Conviction Could Help Plaintiffs in His Dozens of Civil Lawsuits," Forbes (July 3, 2025, 1:49 p.m. EDT), https://bit.ly/40MTGBp. Accessed July 8, 2025.
24. *See* 18 U.S.C. §1589(a).
25. *See* 18 U.S.C. §1591(a).
26. *See* 18 U.S.C. §1591(e)(3).
27. *See United States v. Rivera*, 799 F.3d 180, 185-86 (2d Cir. 2015).
28. *See* 18 U.S.C. §1595(b)(1).
29. *See* 18 U.S.C. §1595(a).
30. Oklahoma Senate Bill 1658 was signed into law in May 2024. This law eliminated the statute of limitations for rape in Oklahoma cases in which either 1) the assailant confesses to the crime or 2) identity is established using DNA evidence. Oklahoma Attorney General Gentner Drummond expressed his enthusiasm for this achievement, emphasizing that the passage of time "must not be an impediment to the prosecution of rapists when DNA evidence exists or a suspect confesses." Neither should civil remedies for egregious sexual misconduct be forfeited based on the passage of time. *See* "Attorney General Drummond praises Gov. Stitt for signing SB 1658," https://bit.ly/4m4l8m9. Accessed July 8, 2025.
31. *See Doe v. Fitzgerald*, 102 F.4th 1089, 1094 (9th Cir. 2024).
32. *See* 18 U.S.C. §1595.
33. *Adia v. Grandeur Mgmt., Inc.*, 933 F.3d 89 (2d Cir. 2019).
34. *Geiss v. Weinstein Co. Holdings LLC,* 383 F. Supp. 3d 156 (S.D.N.Y. 2019).
35. *Doe v. Fitzgerald*, No. CV2010713MWFRAOX, 2022 WL 2784805 (C.D. Cal. May 13, 2022).
36. *See* Julie Dahlstrom, "Trafficking to the Rescue?" 54 *U.C. Davis L. Rev.* 1 (2020).
37. *See Burk v. K Mart Corp.,* 956 F.2d 213 (10th Cir. 1991); *Prince v. City of Oklahoma City*, 2009 WL 2929341 (W.D. Okla. Sept. 9, 2009).
38. *See Collier v. Insignia Fin. Grp.*, 1999 OK 49, 981 P.2d 321.

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Stuff I Learned in 30 Years of Employment Law

By Jim T. Priest

I REMEMBER, AS A FIRST-YEAR LAWYER, sitting in the office of one of my senior partners and asking, "How did you get started in this area of the law?" He shook his head, shrugged his shoulders and said, "It just sorta happened." My internal reaction was, I didn't want that to be my story. I wanted to make a conscious choice about my area of practice. But despite that inner vow, my entrance into the practice of employment law "just sorta happened."

As a young lawyer, I started out doing insurance defense work. As the low man on the law firm "totem pole," I did whatever else drifted down the chain of command. I wrote wills, handled a few divorces, carried my mentor's briefcase and was given the chore of overseeing 75 small subrogation cases. Then, like a lifesaver tossed to a drowning swimmer, I was asked to help defend three police misconduct civil rights cases. My life and legal practice were energized. I liked this work, and some of those cases involved questions about the employment of police officers. Soon, I was giving advice to cities and police chiefs about training, discipline, termination and commendation of police officers. I found myself practicing a very basic form of employment law, although, at the time, I don't recall anyone using that term.

A few years thereafter, an employment case was handed down by the Oklahoma Supreme Court. The 1987 opinion of *Hinson v. Cameron*, authored by Justice Marian Opala, became my springboard to a 30-year career practicing employment and civil rights law. Justice Opala discussed a variety of theories under which an employee might bring a wrongful discharge cause of action in the "at-will" state of Oklahoma. The at-will doctrine held sway in Oklahoma for decades and, technically, still does: All employees without a written contract of employment were considered "at will" and could be fired for good reason, bad reason or no reason. I would later describe this doctrine as Swiss cheese. It was mostly true, just as Swiss cheese is mostly cheese, but both had lots of holes.

The *Hinson* opinion fascinated me so much that I wrote an *Oklahoma Bar Journal* article titled "The Wake Of Hinson v. Cameron: Choppy Waters For The Law Of Wrongful Discharge," and as a result of that article, I was invited to speak at one of the first OBA Law of the Workplace CLEs. I became the organizer and moderator of the annual Law of the Workplace program for the next 25 years. With that exposure, people assumed I knew something about the newly emerging area of employment law (which Justice Opala always reminded me was not the same as "Labor Law"). I received phone calls, referrals and invitations to speak. But inside, I knew how little I knew and felt I was always just one step ahead, like a professor struggling to teach a class for the first time. No one in our growing law firm practiced in this area, so it fell to me to learn and build that practice area. It was an exciting time, and it "just sorta happened."

I provide this personal history as a backdrop to the lessons I learned in 30-plus years of practicing employment law. I hope

the reader finds them practical, applicable and insightful, whether they practice in this area full time or only occasionally. Here are a dozen commandments for handling an employment case.

1) THOU SHALT REMEMBER WRONGFUL DISCHARGE IS LIKE DIVORCE (USUALLY WITHOUT CHILDREN)

Lawyers tend to evaluate cases dispassionately and often fail to account for the emotional aspects of a case. That's probably not the situation in family law cases, where the emotions are there on the surface, but I found it to be true in employment cases. Early in my career, I simply viewed an employment law case from a legal and logical standpoint. Did the employer fire the employee for unlawful reasons or not? I viewed my role as that of a surgeon: Was the tumor cancerous, and if so, remove it. But employment cases are emotional for some of the same reasons divorce cases are. Think about the similarities:

- In both divorce and employment cases, the parties enter a relationship that is viewed, hopefully, as long-term.
- In both situations, trust and mutual expectations are involved.
- In both situations, a failure of expectations leads to frustration, dissatisfaction and often anger.
- In both situations, a parting of the ways creates consequential problems for both parties.

In many of my cases, I failed to fully grasp the emotionality of the parties. Employers got emotional and reacted by terminating an employee. Employees got emotional and did something that led to termination. People got emotionally involved, and sexual harassment resulted. Zig Ziglar once advised people in sales, "People buy on emotion and justify with facts." Mr. Ziglar was talking about a commercial transaction, like buying a car, but it is true in employment transactions as well. Employers fire on emotion and *post facto* justify with facts. Lawyers need to be alert to that. Never underestimate the deep well of emotions involved in employment cases.

2) THOU SHALT BE HUMBLE

My friend Nathan Mellor says, "Arrogance divides, but humility unites." I believe that is generally true. Most lawyers and all trial lawyers are self-confident, which, if unchecked, leads to arrogance. Arrogance will divide the attorney and the jury (and the witnesses).

When I was a student at the Syracuse University College of Law, our team won the National Mock Trial Championship. Naturally, we thought we were pretty good. One day during a trial practice scrimmage, our professor, acting as judge, interrupted my presentation and called me to the bench where he scolded, "Priest, you're young, and you look young, so don't be a smart ass." Ouch. But he was right. For quite a few years after that, I did look young, and I tried to heed Professor Lewin's advice. Even if you think the law is all on your side, even if the other side's case is a dog, even if opposing counsel seems like a stooge, don't be arrogant. And make sure your client stays humble, too.

I was trying an age discrimination case in federal court, and my client, the sheriff of a nearby county, was called by the plaintiff as the first witness. The sheriff held the plaintiff's lawyer in contempt, and once he took the stand, he refused to even look at him. During questioning, the sheriff turned sideways, looked at the jury and hardly looked at the plaintiff's counsel as he answered questions. The judge took a lunch break after direct examination and called the lawyers to her chambers. Looking at me, she asked, "Is your person with settlement authority here? That was the worst witness I've ever seen. You need to settle this case." I told the judge, "He won't be the worst witness after you've seen the plaintiff." But during the lunch break, I strongly scolded my client and told him he needed to retake the stand with humility. "You were elected and know how to get votes. You need to get votes on that jury. Show that lawyer respect!" The sheriff did better after lunch, and we eventually won the case. But arrogance could have easily lost it.

3) THOU SHALT DISBELIEVE YOUR OWN CLIENT

I remember working with my senior partner, Ken McKinney, on a case, and he assigned me some fact-gathering. When I reported back to him the facts as I understood them, he asked, "Why do you believe that, Jim?" I replied, "That's what our client told me." Mr. McKinney responded, "And you believed him?" I asked why our client would lie to us and explained that we were trying to help him, and he has attorney-client privilege. "Jim, you're very naive," he said. Ouch! I'd rather he called me stupid, but he was right. Do not believe everything your client tells you. Always doubt. Always verify. Always disbelieve what your client tells you, unless – and until – you can corroborate the truth.

4) THOU SHALT ALWAYS VISIT THE EMPLOYMENT SITE

There were many times I asked my employer client to send me all the information requested by the other side. They would comply and tell me I now had everything. But I learned early on to physically go to the employer's office and the site where the employee worked. Invariably, I would find more things I needed. There was always the "official" personnel file, and then there was the "private" file the supervisor kept in their desk. "Oh, yeah, I forgot about that file," they would say. Physical proximity leads to greater familiarity. When I defended car accident cases, I always visited the scene of the accident and learned to do the same with employment cases.

Do not believe everything your client tells you. Always doubt. Always verify. Always disbelieve what your client tells you, unless – and until – you can corroborate the truth.

5) THOU SHALT READ EVERY DOCUMENT IN THE FILE AT LEAST TWICE

I made it my practice to always read every document in the file twice, often three times. It was amazing to me – the deeper into a case I went, the more I saw in documents I had already reviewed. Employment cases tend to be document-intensive. A marginal note I had previously dismissed as insignificant took on more meaning after a few depositions. I learned about a missing document only by reading through all the other documents. A few times, I found out in trial that I missed a seemingly meaningless aspect of a document, only to have it pointed out to me through a witness called by opposing counsel. Ouch. Someone once told me, "There are no geniuses in the courtroom, only drudges in the office." Not quite true, but close enough. Compulsive preparation is the key to trial success.

6) THOU SHALT FIND AND SING THE THEME SONG AT TRIAL

When you get to the courtroom, you have likely lived with the case for months, if not years. You should know every aspect, but to the jury, it's all new. They need help seeing the big picture. They need a guide – a template. Your verbal opening statement alone is not enough. You and the jury both need a theme. Like the theme song of a movie that becomes an earworm, you want to provide a scarlet thread that weaves through the case that is easy for the jury to follow.

A theme I sometimes used, especially in wrongful discharge cases, was based on the logical fallacy "*post hoc ergo propter hoc*," translated to "after this, therefore, because of this." I tried to convey to the jury that just because one thing happens sequentially after another does not mean the first caused the second. I did not use the Latin lingo, of course, but I tried to convey the concept in everyday terms. The sun comes up in the morning, and then your alarm goes off. The sun did not make your alarm go off. The two things are independent of one another. I did not hit the jury over the head with the theme in opening statement but began to introduce it during *voir dire* – opening statement – when questioning witnesses and then tied it all together in closing. Look for the big picture theme in the pile of facts and make the case understandable and memorable.

7) THOU SHALT KNOW THE STATUTES AND CASES AND PREPARE EXCELLENT JURY INSTRUCTIONS

When I first started trying cases, I paid attention to the law but viewed jury instructions as mainly the judge's responsibility. And there were model jury instructions, right? What's the big deal?

Over the years, I learned that most judges rely on the attorneys to do a good job researching and preparing jury instructions. I also learned most jurors are conscientious about following the instructions – most of the time. Do not rush through instructions. They are the last thing jurors hear before retiring to the deliberation room. And do not try to trick the court by inserting a favorable instruction that is not supported by a good-faith argument in the law. Judges know whose instructions they can trust and whose they can't.

I suffered an unhappy jury instruction experience defending a wrongful discharge case where the verdict was $40,000 in actual damages and $20,000 in punitive damages. It was the only punitive verdict I ever received, and I could not understand why they awarded punitive damages. I talked to the jury foreperson after to ask for an explanation. "Well, we thought he should get a year's pay, and the reason he was fired was partly his fault and partly your client's fault, so we just divided the salary in half." Obviously, that jury did not pay attention to the instructions, but they were trying to be fair. Perhaps I should have spent more time crafting the punitive damage instruction.

8) THOU SHALT REMEMBER ALL JURORS HAVE BEEN EMPLOYEES, BUT FEW HAVE BEEN EMPLOYERS

This seems almost too obvious to state, but its importance merits emphasis. Most of your jurors have been employees, but very few have been employers. A few may have been supervisors, but the plaintiff will knock those jurors off. You will likely be left with six or 12 people who have never had to discipline or fire someone. Their instinctual bias (which will not be admitted) is in favor of the worker, other things being equal. They don't care about the long-standing at-will doctrine. They abhor the idea that anyone should lose their job without multiple adequate warnings, in writing, acknowledged as received by the employee, in writing. Most jurors care little about BFOQs (bona fide occupational qualifications). They give not a farthing for "legitimate business reasons" or "undue hardships" of a business. That's why I preached that documentation of

progressive discipline should precede any but the most egregious circumstances for termination. In one termination case, I picked what I thought was a good jury, only to have a juror come in the next day with a "UNION YES" T-shirt. *Voir dire* didn't cover message T-shirts.

9) THOU SHALT UNDER-PROMISE AND OVER-DELIVER TO THE JURY

This commandment is true in any trial but doubly true in employment cases. If the lawyer over-promises and under-delivers, they do not come across as credible. Remember, most jurors already suspect lawyers are not honest, so establishing veracity is critical. I used to write down all the promises opposing counsel made in opening statement and would punish them in closing argument for any unfulfilled promises. If you are uncertain how the evidence will lay out or how a witness may testify, leave it a little vague. Better vague than vanquished.

10) THOU SHALT PUT ON CREDIBLE, LIKEABLE WITNESSES

I had a law partner who believed it was extremely important to put on as many "likeable" witnesses as possible, regardless of how much relevant testimony they could offer. He believed likeability was a key factor in winning jury trials, and the more likeable witnesses you had, the more points you scored. I never completely bought into his theory, but I did try to ensure that anyone I put on the stand would be liked by the jury, smile, be humble and could get to the point without meandering testimony. This is especially true for the plaintiff and the defendant who made the decision to terminate or who was accused of wrongful conduct. In the only case I tried where punitive damages were awarded, a juror told me, "We didn't really like your client." The truth was, I wasn't too crazy about him myself and didn't think he came off credibly on the stand. I should have worked with him more or, perhaps, found someone else at the company to better convey the reasons for termination.

On the plaintiff side, remember, no one likes a whiner. Better for your plaintiff to be stoic than stricken. I had a great plaintiff once who frustrated me with his testimony on the stand. Prior to trial, we had gone over the anxiety and worry he had suffered as a result of his termination, and it was significant. But when he got on the stand, he turned stoic, saying, "Well, you have to play the cards you're dealt, and I tried to move on." I knew that was a gross minimization of what he had been through. It worked out better, though, because I put on his wife, who told the true picture of how often he was up at night, worrying about how they were going to pay their daughter's college bills. Coming from the wife was even better than if the plaintiff himself had said it, and the jury loved his understated style.

11) THOU SHALT KEEP YOUR TRIAL DESK NEAT AND YOUR PRESENTATION CRISP

I was a dedicated disciple of Professor Irving Younger's *Trial Techniques* and listened to or read anything he said or wrote. He advocated for keeping your trial table neat and organized – no stray papers or messy files. He said it conveys a message to the jury: "I'm completely in control and in command of this case." Professor Younger also promoted crisp and simple questioning. Instead of "motor vehicle," use the word "car." Instead of "preceding," use "before." Substitute "after" for the word "subsequent." Avoid jargon, legalese like "*prima facie* case," and explain things as you would to an intelligent eighth grader. Most of my past juries would also implore you to get to the point and not repeat questions for emphasis.

One juror asked me, "Do lawyers think we're stupid? They keep repeating the same things." When my 8-year-old daughter came to watch me try a case, she later asked, "Daddy, why can't lawyers ask plain questions?" I told her I would try to do better the next day. Think guerrilla warfare. Get in, get out. Put your witnesses on roller skates and move crisply through your case without rushing but without dawdling. The jury will pick up on what you're doing (and so will the judge), and it will win points.

12) THOU SHALT LOOK TO YOUR CLIENT'S BEST INTEREST IN SETTLEMENT

Settlement is an option, not a sign of weakness. Negotiations are often infected with bravado and bluster, but remember, the case is not about you. From the first client interview, you should discuss settlement as a likely possibility and encourage your client to be thinking about it. Some clients may view this kind of talk as a lack of confidence in yourself or their case, so you will need to explain that 95% of all cases never go to trial, and most settle at some point. But most settlements happen only after a lot of emotional toil and intrusive discovery. Talk about probable timelines, including the possibility of appeal. I used to tell my clients, "Your case will take longer than you want, will cost you more than you can estimate and, in the end, will probably leave you feeling less satisfied than you want to feel." I always tried to prepare clients for a worst-case scenario. Under-sell and over-deliver applies here, too.

I was involved in a sexual harassment employment case where my client was the ex-wife of her boss. Her claim was that he was trying to take advantage of their former relationship by hugging and fondling her at work. The settlement conference in federal court seemed to be getting nowhere until the judge suggested that an apology be included with the financial settlement. I responded that it would have to be a genuine apology and not some "I'm sorry you felt hurt" kind. The judge assured me it would be sincere. My client had been as hard as flint until that point, but her face, surprisingly, softened at the prospect of a genuine apology. When the judge returned with the written apology, I was surprised. It really was a sincere, abject apology, and it was the key to getting the case settled. The apology did nothing for my contingent fee, but it meant the world to my client. So be creative in thinking about what truly matters to your client (on both sides) and consider nonmonetary elements as well as dollars.

POSTLUDE

Remember the original Ten Commandments? After receiving them from God, Moses threw down the stone tablets and broke them when he came down from Mount Sinai and found the nation sinning. You'll probably break some – or all – of these commandments. You won't die as a result, but you'll find your results in employment cases are improved by following them. Want good results? Follow the commandments! Don't let your case, or your career, just sorta happen.

ABOUT THE AUTHOR

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What To Expect When Navigating the Pregnant Workers Fairness Act

By Eric Di Giacomo and Lacey Pogue

A HISTORY OF PREGNANCY-BASED LEGAL PROTECTIONS FOR THE WORKPLACE

The Pregnant Workers Fairness Act (PWFA) became law on June 27, 2023.[1] While many thought the protections it mandated were already in place, it is not a stretch to say the PWFA was over 100 years in the making. In 1908, the U.S. Supreme Court rejected a 14th Amendment challenge in *Muller v. Oregon* to a state law prohibiting women from working over 10 hours a day.[2] The court reasoned that "healthy mothers are essential to vigorous offspring," and "the physical well-being of a woman" is "an object of public interest and care."[3] The Oregon law and its various corollaries in other states were set aside by the enactment of the Civil Rights Act of 1964, which prohibited discrimination "because of sex." The Supreme Court first recognized sex-based discrimination in 1971[4] when it struck down a corporate policy that prohibited hiring mothers of preschool-age children because they were "unreliable," while still hiring their father counterparts. In 1974, the court struck down a school policy forcing female teachers to go on maternity leave at the beginning of the fifth month of pregnancy.[5]

The road to equal protection for working mothers continued along a nonlinear trajectory, as mothers faced discrimination in their employment benefits through exclusion from health insurance plans and seniority accrual due to pregnancy. In the 1974 case of *Geduldig v. Aiello*, the Supreme Court upheld a California workers' compensation law (for nonwork injuries) that permitted the denial of insurance benefits for work loss resulting from a normal pregnancy.[6] The court reasoned that excluding pregnancy from the list of compensable disabilities was not sex-based discrimination and did not violate the 14th Amendment. The Supreme Court expanded this approach two years later in *Gilbert v. General Electric Co.* when it held that a private employer could explicitly exclude pregnancy from its disability benefits plan.[7] The court found that these types of plans did not violate Title VII of the Civil Rights Act, as these policies did not show discrimination against women but just excluded pregnancy – a "voluntary" condition "confined to women" – while still insuring risks such as vasectomies and circumcisions.[8]

In a swift reaction to the *Gilbert* ruling, Congress introduced and passed the 1978 Pregnancy

Discrimination Act (PDA), an amendment to Title VII that defined "because of sex" to include "on the basis of pregnancy, childbirth, or related medical conditions."[9] The PDA mandated that pregnant women "shall be treated the same for all employment-related purposes, including the receipt of benefits ... as other persons not so affected but similar in their ability or inability to work."[10] The PDA represented a great victory in the fight to improve the trajectory of women's employment rights. In the following years, the Supreme Court renounced *Muller* as women began seeking more physically demanding and higher-paying jobs.[11] In *Johnson Controls*, the employer's "fetal protection policy" barred women from holding positions that required lead contact unless they had proof of sterility, as lead was known to cause birth defects. The company did not apply the policy to male employees.[12] The court rejected this policy as "it is no more appropriate for the courts than it is for individual employers to decide whether a woman's reproductive role is more important to herself and her family than her economic role."[13]

While progress continued, a new conflict arose regarding women who needed "light duty" style accommodations for strenuous job duties that conflicted with their pregnancy. Upon the passing of the Americans with Disabilities Act (ADA) in 1990, employers began regularly altering job duties to meet disabled workers' needs but still denied accommodations to pregnant women as they were not "similar" in their "inability to work." The Supreme Court addressed this issue in *Young v. United Parcel Service*, wherein a pregnant worker sued her employer for not accommodating her lifting restriction and for mandating that she stay home during her pregnancy without pay.[14] The evidence indicated that UPS accommodated nonpregnant employees, routinely approving lifting restrictions to employees post-injury but denying the requests if they related to pregnant women.[15] The Supreme Court rejected UPS's accommodation position, determining that the rejection of pregnant worker accommodations must have "sufficiently strong" justification.[16]

Unfortunately, *Young*'s language did not stop pregnancy discrimination, nor did it necessarily improve access to justice for working mothers. Courts continue to permit employers to deny pregnancy accommodations in two-thirds of cases.[17]

The PWFA is a landmark federal civil rights law. It gives pregnant and postpartum workers the right to reasonable accommodations in the workplace, without discrimination or retaliation, for family planning, pregnancy, childbirth and related medical conditions, regardless of how the employers treat "similar" workers. The necessity for these protections – and for employers to understand and follow the PWFA – cannot be overstated. Over 80% of working women will have a child in their lifetime, and 20% of these women report they suffered discrimination in the workplace.[18] This article discusses current federal anti-discrimination laws available to pregnant workers and the various gaps in coverage. It also provides a guide to complying with the PWFA and recent case law interpreting it.

THE GAPS: HOW OTHER FEDERAL STATUTES DON'T EFFECTIVELY ACCOMMODATE WORKING MOTHERS

Pregnancy Discrimination Act

The PDA clarified that pregnancy discrimination was discrimination "on the basis of sex."[19] While the PDA expanded protections granted to other protected classes under Title VII to pregnant people, it only required that employers treat pregnant workers no worse than other "similarly situated" employees. This remained a significant legal roadblock for pregnant employees. It was difficult for pregnant employees to identify other employees with similar nonpregnancy limitations who received employer-provided accommodations. Further, some courts refused to consider accommodations granted under the ADA as appropriate comparators when analyzing claims under the PDA.[20]

Americans with Disabilities Act

The ADA is a federal civil rights law designed to prohibit discrimination because of disability.[21] Originally, the ADA excluded pregnancy from the list of conditions considered a qualified disability; however, the 2008 amendments expanded the definition of disability to include pregnancy-related impairments arising from a disability. Hence, the application of the definition of a pregnancy-related disability limits the ADA's scope to only certain circumstances.[22] Restrictions related to pregnancy, like other disabling conditions, must reach the threshold of substantially limiting a major life activity for protection under the ADA.[23] Protection has still been denied when courts find the

pregnancy-related impairment is transitory and minor.[24]

While these parameters are consistent with how disabilities are evaluated under the ADA, this framework only provides reasonable accommodations to mothers who have pregnancy complications classified as abnormal, severe or high risk. Thus, over 90% of women who progress through their pregnancies without these complications struggle to attain protection under the ADA.[25]

Family and Medical Leave Act

In 1993, the Family and Medical Leave Act (FMLA) was enacted to provide unpaid leave for employees in circumstances related to the employee's medical needs or the needs of a family member.[26] While not its primary focus, the FMLA mandates employers allow employees 12 weeks of unpaid leave[27] in a 12-month period for the birth or adoption of a child, foster care placement, bonding with a child, prenatal care or incapacity related to pregnancy.[28] Additionally, the spouse of a pregnant employee may use FMLA leave for the birth of their child and to care for the mother.

Unfortunately, the FMLA's coverage fails to protect a sizable group of pregnant women. As a threshold matter, it only applies to employers with 50 or more employees within 75 miles and eligible employees who worked with the employer for at least 1,250 hours during the immediately preceding 12 months.[29] Further, parents working for the same company may only take a combined 12 weeks of leave under the FMLA. It is estimated that approximately 44% of workers are not eligible for FMLA leave because they work for small employers, do not work enough hours or have not worked for their employer for a long enough period.[30]

PREGNANT WORKERS FAIRNESS ACT: THE NEED-TO-KNOWS

The PWFA became effective June 27, 2023, and the final regulations took effect June 18, 2024.[31] The purpose of the PWFA is to expand upon the existing protections discussed above, as those were "insufficient to ensure that pregnant workers receive the accommodations they need."[32] The following is a guide to assist employees and employers in navigating the PWFA.

The PWFA applies to public and private employers with 15 or more employees and unions.[33] It applies to a "qualified employee or applicant with a known limitation related to pregnancy, childbirth, or related medical conditions absent undue hardship." A qualified employee is one who can perform the essential functions of their position with or without a reasonable accommodation or one who is unable to perform an essential function of the job, so long as it could be performed in the near future (determined on a case-by-case basis but defined as approximately 40 weeks). Known limitations are broadly defined as those communicated to employers and are inclusive of modest, minor or episodic impediments.[34]

The PWFA outlines five prohibited practices: 1) denial of reasonable accommodation, 2) forced accommodation, 3) failure to hire, 4) forced leave and 5) retaliation.[35]

Prohibited Practice No. 1: Denial of Reasonable Accommodation

Employers must now provide reasonable accommodations for known pregnancy, childbirth and related medical conditions, absent undue hardship to the employer. The following are examples of reasonable accommodations for pregnant mothers: light duty assignments and help with manual labor/lifting, temporary transfer to remote or less physical positions, flexible scheduling, modifying company policies

regarding standing, changing dress codes to permit maternity clothes, transferring to remote work, leave for related medical appointments, *additional time for restroom or snack breaks, allowing employees to carry and drink water in their work area and alternating between sitting and standing.*[36]

The obligation to provide "reasonable accommodation" is subject to the "undue hardship" akin to that used under the ADA. Thus, the employer is not obligated to provide a reasonable accommodation that is significantly difficult or expensive considering the employer's financial resources and manpower. The PWFA incorporates the ADA's interactive process requirements and instructs that it will be used to determine appropriate reasonable accommodation. The interactive process can occur via telephone, email or in person, as long as the employer responds promptly and in good faith.

Prohibited Practice No. 2: Forced Accommodation

The PWFA prohibits employers from requiring employees to accept accommodations other than any reasonable accommodation arrived at through the interactive process.[37] This is meant to codify the prohibition from *Johnson Controls* and address the concern that employers may restrict what pregnant workers do in the mistaken belief that workers need accommodations they themselves did not request.

Prohibited Practice No. 3: Denial of Employment Opportunities

This prohibited practice covers claims traditionally classified as discriminatory, such as "failure to hire" or "failure to promote." An employee's or applicant's known need for reasonable accommodation cannot serve as part of the covered entity's decision regarding hiring or promotion unless the reasonable accommodation imposes an undue hardship on the covered entity.

Regardless of the legal battles surrounding the PWFA, it remains imperative for employees to communicate with their employers about the needs that arise from pregnancy and the birth of a child and how employer policies may create challenges (many of which can be unintended).

Prohibited Practice No. 4: Forced Leave

This prohibition prevents employers from requiring an employee to take paid or unpaid leave if another reasonable accommodation can be provided. This in no way prohibits leave from serving as a reasonable accommodation if the employee requests it or if no other accommodation allows the employee to remain at work absent undue hardship.

Prohibited Practice No. 5: Taking Adverse Action

This prohibition provides that an employer cannot take adverse action in terms, conditions or privileges of employment against a qualified employee or applicant for using a reasonable accommodation. The PWFA also includes anti-retaliation and anti-coercion provisions for employees, former employees or applicants who exercise their rights under the PWFA. The PWFA also includes such protections for employees, former employees and applicants who try to assist others in exercising their rights under the PWFA.

The anti-retaliation provision protects workers from an employer's conduct that is materially adverse or might dissuade a reasonable worker from making or supporting a charge of discrimination. The anti-coercion provision is modeled after the ADA's interference section. These are broader than retaliation claims and include intimidating an applicant from requesting accommodation during the hiring process (because it will not result in being hired) or where the employer issues a policy or requirement that limits the employee's right to request a reasonable accommodation of a known limitation.

RECENT LITIGATION AND CHALLENGES TO THE PWFA

The Equal Employment Opportunity Commission (EEOC) has filed several suits under the PWFA. Among these are the first settlements, two of which involved pregnant workers obtaining compensatory damages and backpay awards totaling $100,000 (for termination after the employer failed to accommodate recovery time following a stillbirth) and $50,000 (for termination following a request to attend monthly pregnancy appointments).[38] The settlements also included mandates regarding workplace policy changes, appointing EEO coordinators and training for employees.[39]

One of the initial lawsuits filed by the EEOC is currently pending in the Northern District of Oklahoma. In *EEOC v. Urologic Specialists of Oklahoma, Inc.*, a pregnant medical assistant allegedly could not "sit, take breaks, or work part-time as her physician said was needed to protect her health and safety during the final trimester of her high-risk pregnancy" and was forced to take unpaid leave.[40] It further alleges that she refused to return when her employer would not guarantee she would receive breaks to express breast milk,[41] which also premises a violation under the Providing Urgent Maternal Protections for Nursing Mothers Act.[42]

Most challenges to the PWFA attack the EEOC's final rule, which requires employers to grant leave to employees requesting leave for elective abortions. Texas successfully challenged the EEOC's ability to pursue claims against the state, as it is an immune state actor that would face substantial costs in defending these lawsuits. Federal courts in Louisiana and North Dakota have granted preliminary injunctions enjoining enforcement of these regulations due to concerns that they conflict with existing state laws on abortion, infringing upon state sovereignty, free speech and religious liberty.[43] Seventeen states have mounted a challenge against this final rule on behalf of state employers in the 8th Circuit Court of Appeals, contending that the EEOC exceeded its authority under the PWFA. [44]

IMPORTANT TAKEAWAYS

Regardless of the legal battles surrounding the PWFA, it remains imperative for employees to communicate with their employers about the needs that arise from pregnancy and the birth of a child and how employer policies may create challenges (many of which can be unintended). Employers must engage in the interactive process with pregnant employees to determine reasonable accommodations. Employers should review and revise existing accommodation processes where necessary, establish processes to follow when employees request accommodation due to pregnancy-related limitations, maintain accurate documentation regarding these requests and train their staff accordingly. Working together, employers and employees can avoid costly, time-consuming lawsuits and ensure that women can pursue economic prosperity while caring for their health and the health of their growing families.

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ENDNOTES

1. 42 U.S.C. §2000gg.
2. *Muller v. Oregon*, 208 U.S. 412, 423 (1908).
3. *Id.* at 421.
4. *See Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971); *see also Reed v. Reed,* 404 U.S. 71 (1971); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972).
5. *Cleveland Board of Education v. LaFleur*, 414 U.S. 642 (1974).
6. *Geduldig v. Aiello*, 417 U.S. 484, 494-97 (1974).
7. *Gilbert v. Gen. Elec. Co.*, 429 U.S. 125 (1976).
8. *Id.* at 136, 152.
9. Pregnancy Discrimination Act of 1978, Pub. L. 95-555, 92 Stat. 2076.
10. *Id.*
11. *United Automobile Workers v. Johnson Controls, Inc.,* 499 U.S. 187 (1991).
12. *Id.* at 191-2.
13. *Id.* at 211.
14. *Young v. United Parcel Serv.*, 575 U.S. 206, 211 (2015).
15. *Id.* at 212.
16. *Id.* at 229.
17. Dina Bakst, Elizabeth Gedmark and Sarah Brafman, "Long Overdue – It Is Time for the Federal Workers Fairness Act," A Better Balance (2019), available at http://bit.ly/3ZVffz7.
18. Ben Gitis, Emerson Sprick and Adrienne Schweer, "BPC – Morning Consult: 1 in 5 Moms Experience Pregnancy Discrimination in the Workplace," Bipartisan Policy Center (2022), available at http://bit.ly/4no5kwd; Katherine Schaeffer and Carolina Aragão, "Key facts about

moms in the U.S.," Pew Research Center (2023), available at http://bit.ly/44tIWIS.

19. 29 C.F.R. §1604, App.

20. *Young*, 575 U.S. 206 at 218.

21. Pub. L. No. 101-336, 104 Stat. 327 (1990).

22. *Gabriel v. City of Chicago*, 9 F.Supp.2d 974 (1998). This case is just one illustration of pregnancy not being considered a disability per se. Subsequent EEOC guidance further notes this, stating, "Conditions, such as pregnancy, that are not the result of physiological disorder are ... not impairments." 29 C.F.R. §§1630, App., 1630.2(h).

23. 29 C.F.R. §§1630, App.; 1630.2(h).

24. *See* 42 U.S.C. §12102(3)(B); 29 C.F.R. §1630.15(f). The ADA defines "transitory" as an impairment with an actual or expected duration of up to six months. Minor is defined on a case-by-case basis. Courts consider factors such as severity of the impairment, symptoms, required treatment, associated risks/complications, need for surgical intervention and post-operative care among others.

25. *Obstetrics and Gynecology: High-Risk Pregnancy*, UCSF Health, available at https://bit.ly/4lvU9j1 (last visited April 7, 2025).

26. 29 U.S.C.§2611.

27. While the FMLA only guarantees entitlement to unpaid leave, experiences may vary regarding paid leave, specifically if an employer provides short-term disability benefits that may provide pay to an employee during a concurrent FMLA leave related to pregnancy and/or childbirth.

28. 29 U.S.C. §2612.

29. *Id.*

30. Scott Brown, Jane Herr, et al., *Employee and Worksite Perspectives of the Family and Medical Leave Act: Supplemental Results from the 2018 Surveys*, Abt Associates, (July 2020); "Key Facts: The Family and Medical Leave Act," National Partnership for Women and Families (February 2025), available at https://bit.ly/44bsez9.

31. 29 C.F.R. §1636 (2024).

32. H.R. Rep. No. 117-27, at 12 (2021).

33. 42 U.S.C. §2000gg(1)(B)(i).

34. EEOC, "Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)," (2024), available at https://bit.ly/4lsk2kt (last accessed April 7, 2025); 29 C.F.R. §1636 (2024).

35. 42 U.S.C. §2000gg-1.

36. *See* 29 C.F.R. §1636 (2024). EEOC interpretative guidance acknowledges that these proposed accommodations marked in italic will "in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship." *Id.* The EEOC identifies that their intent behind identifying these proposed accommodations is to help expedite employees' requests for simple accommodations and therefore reduce litigation. *Id.*

37. 42 U.S.C. §2000gg-1(2).

38. "Lago Mar Resort and Beach Club to Pay $100,000 in EEOC Pregnant Workers Fairness Act Suit," EEOC, Oct. 11, 2024, available at https://bit.ly/44xjPFb; "ABC Pest Control, Inc. Conciliates Pregnant Workers Fairness Act Charge," EEOC, Sept. 11, 2024, available at https://bit.ly/4lcOzCC.

39. *Id.*

40. "EEOC Sues Two Employers Under Pregnant Workers Fairness Act," EEOC, Sept. 26, 2024, available at http://bit.ly/4lagJOE.

41. *Id.*; *see also* Complaint, *EEOC v. Urologic Specialists of Oklahoma, Inc.*, No. 24-cv-00452-JFJ (N.D. Okla. Sept. 25, 2024).

42. The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) was enacted in 2022, providing protections for lactating mothers in the workplace. The PUMP Act expands upon existing guidelines from a 2010 amendment to the FLSA, expanding the protections and available remedies for women who need to take breaks to express breast milk. The PUMP Act mandates that employers grant this break time for up to one year following the birth of a child. It does not require that compensation be granted during these breaks, unless the employee is not "completely relieved from duty during the entirety of such break." Again, this statute is narrow in addressing the needs of mothers, only addressing breaks to express breast milk. This act, being passed in the same year as the PWFA, works in tandem with it to expand protections for working women.

43. *Louisiana v. EEOC*, 705 F.Supp.3d 643, 661 (W.D. La. 2024).

44. *State of Tennessee v. EEOC*, No. 24-2249 (8th Cir.) (Feb. 20, 2025).

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The Employment Law Landscape in a Post-*Loper* World

By Byrona J. Maule and Stassi M. Vullo

THE SUPREME COURT'S DECISION IN *LOPER BRIGHT* MARKED A SIGNIFICANT shift in administrative law.[1] For 40 years, courts have employed the *Chevron* standard, deferring to an agency's interpretation of statutory text when that text was ambiguous.[2] In *Loper Bright*, the Supreme Court overruled this long-held precedent, marking a seismic shift in the administrative branch.[3] In a 6-3 decision, the court held that courts "must exercise independent judgment in determining whether an agency has acted within its statutory authority."[4] The court overruled *Chevron* deference, rejecting the idea that statutory ambiguities inherently delegate interpretive authority to agencies. *Chevron* deference centered on the premise that agencies possess special expertise in their fields, warranting deference regarding their statutory interpretation. The court disagreed, noting that the Administrative Procedures Act (APA) specifically denotes that it is a court's duty to "decide all relevant questions of law" and "interpret statutory provisions."[5] *Loper Bright* has shifted the legal landscape – judges no longer defer to an agency's interpretation. Federal courts and judges now may take a more active role in ascertaining and defining a statute's "best" reading.

The *Loper Bright* decision was followed closely by *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*.[6] In *Corner Post,* the Supreme Court considered when a claim under the APA accrues for purposes of challenging a particular final agency action or regulation. The Supreme Court held that the six-year statute of limitations under the APA did not accrue until a plaintiff had suffered an injury. A limitations period does not commence until the plaintiff has a complete and present cause of action. The impact of this holding is that a newly formed company, Corner Post Inc., which was formed in 2018, can bring a lawsuit in 2021 challenging a regulation enacted by the Federal Reserve Board in 2011. Why? Because Corner Post Inc. was first injured by the 2011 regulation in 2018, upon Corner Post Inc.'s creation, and thus, it can challenge the regulation that had been in place since 2011 under *Loper Bright.* The result of *Loper Bright* and *Corner Post* taken together is that *any* regulation can be challenged under *Loper Bright* at any time if a new "entity" or "company" brings the challenge. For employers who need certainty to create strategic plans around such things as the cost of doing business – *i.e.*, wage and overtime expenses – these cases have not only created challenges but also opportunities.

Loper Bright will also be a tool for employers to challenge regulations that an employer deems unfair or an administrative overreach. When challenging a regulation under *Loper Bright*, an important

factor to consider is forum selection. The cases discussed in this article come from the district and appellate courts of the 5th Circuit. This is arguably a strategic decision to appear before judges averse to agency "overreach" or to appear before judges appointed by a president whose agency heads did not oversee the promulgation of the rule being challenged. Whatever the reason, we will likely see this continue, and it will be another factor for employers to consider when thinking about challenging agency action pursuant to *Loper Bright*.

Lower courts were ready to act when the *Loper Bright* decision came down, as it took nearly no time for the impact of *Loper Bright* to be felt in the employment law world. Mere months after the decision in *Loper Bright,* a district court in the Northern District of Texas granted summary judgment to a plaintiff challenging the Federal Trade Commission's (FTC) authority to issue a noncompete rule and ultimately issued a nationwide injunction on the rule's enforcement.[7] The Department of Labor (DOL) also faced post-*Loper Bright* challenges to its authority. In August 2024, the 5th Circuit

struck down the DOL's "so-called 80/20 tip-credit rule."[8] The Fair Labor Standards Act (FLSA) allows employers to pay tipped employees only $2.13 per hour in direct wages as long as the direct wages and tips combine to reach at least the U.S. minimum wage of $7.25 per hour.[9] The DOL promulgated a rule that "attempted to limit employers' ability to take this tip credit, excluding employees who spent more than 20 percent of their time on nontipped activities."[10] It also excluded those employees who spent more than 30 minutes each "shift on side work that directly support[ed] tip activity."[11] Drawing on *Loper Bright*, the 5th Circuit invalidated the rule, holding that no deference was owed to the DOL's interpretation of the text of the statute.[12] Further, the court held that the rule was arbitrary and capricious. These are just a few examples of the post-*Loper Bright* decisions coming from federal courts.

This article addresses one particularly relevant impact of *Loper Bright* on employment law and, ultimately, employers in the area of wage and hour: the use of *Loper Bright* to challenge the DOL's authority to define and delimit the exemption to overtime.

THE DOL MINIMUM SALARY RULE STANDS, FOR NOW

The FLSA sets out a variety of standards and protections governing labor conditions, including minimum wage standards and overtime requirements for work beyond 40 hours.[13] The FLSA applies broadly to employees, which it defines as "any individual employed by an employer."[14] However, there are exemptions to the overtime regulations. One of these exemptions was the subject

of litigation and review by the 5th Circuit Court of Appeals.

The Minimum Salary Rule

In *Mayfield*, the court took up a challenge to the 2019 Minimum Salary Rule, which was promulgated pursuant to what is known as the "EAP exemption" or "white-collar exemption."[15] This exempts "any employee employed in a bona fide executive, administrative, or professional capacity" from the time-and-a-half requirement for work performed over 40 hours of §207.[16] It also gives the secretary of the DOL the power to "define[ ] and delimit[ ]" the terms of the exemption.[17] For over 80 years, the DOL has defined the so-called EAP exemption "to include a minimum-salary requirement" that prevents workers from qualifying for the EAP exemption if their salary falls below a specified level.[18] The "DOL has long justified its rules on the ground that the terms used in the EAP exemption connote a particular status and prestige that is inconsistent with low salaries."[19] It further asserts that "salary-level" is an effective screen for "an employee's job duties."[20]

The rule challenged in *Mayfield* was promulgated in 2019 and raised the minimum salary required to qualify for the EAP exemption from $455 per week to $684 per week.[21] Mr. Mayfield, a small business owner who runs 13 fast-food restaurants, sued the DOL, asserting the DOL lacked "the authority to define the EAP exemption in terms of salary level" and that it violates the nondelegation doctrine.[22]

The 5th Circuit's Analysis

In determining the outcome, the court first found that *Wirtz v. Mississippi Publishers Corp.* did not govern the court's analysis because there, the 5th Circuit looked at whether the Minimum Salary Rule promulgated by the DOL was *arbitrary and capricious*, not whether it exceeded the DOL's statutory authority. Given that the APA clearly delineates between

these two types of challenges, *Wirtz* was not on point.[23]

The court next ruled out the major questions doctrine, which is triggered by one of three things: economic significance, great political significance or intrusion upon the domain of state law. The major questions doctrine requires that agencies, given the principles of separation of powers and legislative intent, point to "clear congressional authorization" when addressing questions of "vast economic and political significance."[24]

First, the court found that most cases applying the doctrine of "economic significance" "involved hundreds of billions of dollars of impact."[25] The impact of the 2019 Minimum Salary Rule was only around "$472 million in the first year."[26] Neither did the court find that the rule regulated a significant portion of the American economy – only 1.2 million workers were removed from the FLSA exemption by the new proposed minimum salary, a "small percentage of the overall workforce."[27] The court noted that "whether to use salary level to determine which employees should be exempt from various FLSA protections is not in line with the type of issues that have been considered politically contentious enough to trigger the doctrine."[28] Additionally, this power is not newly found by the DOL. It has been the one that has promulgated this type of regulation for decades. The court points out that the "DOL asserts an authority it has asserted continuously since 1938."[29]

The court opined *in dicta*, "A particular minimum-salary rule could raise issues *because of its size*."[30] This is interesting given that, at the time of this ruling, the DOL was considering a proposed Minimum Salary Rule that would increase the minimum salary roughly 55% from the 2019 Minimum Salary Rule.[31] However, the court went on to explain that Mr. Mayfield's argument was that any consideration of salary in defining and delimiting the exemption was improper because it was beyond the agency's authority. The court thus determined that the major questions doctrine did not apply.

DOL Statutory Authority

The court next looked at whether the 2019 Minimum Salary Rule exceeded the DOL's statutory authority. Quoting *Loper Bright,* the court noted, "'Courts decide legal questions by applying their own judgment,' even in agency cases."[32] The court must "independently identify and respect [constitutional] delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA."[33] Congress explicitly delegated to the secretary of the DOL the authority to define and delimit the terms of the FLSA exemption.[34] Thus, the court needed to determine whether the rule fell within the "outer boundaries of that delegation."[35]

The court set out to do this by determining what the terms "define and delimit" included in the delegation meant and whether the rule could be squared with that delegation. *Mayfield* asserted that the power to "define and delimit" the terms of the exemption only allowed the agency to further specify duties that qualify an employee for the exemption (*i.e.*, what duties qualify an employee as being an executive, administrator or professional).[36] *Mayfield* highlights that some exemptions are defined in terms of duties, and others reference salary level, noting that Congress included a salary requirement when it wanted one.[37] The court pointed out, however, that the question here is not "whether the Exemption's terms should be interpreted to contain a salary requirement" but rather "whether the power conferred by the explicit delegation to 'define[ ] and delimit[ ]' the terms of the statute allows DOL to impose a salary requirement."[38] The DOL argued, and the court agreed, that using salary level was a permissible criterion for EAP status. The terms in the exemption "connote a particular status or level for which salary may be a reasonable proxy."[39] Moreover, "distinctions based on salary level are also consistent with the FLSA's broader structure, which sets out a series of salary protections for workers that common sense indicates are unnecessary for highly paid employees."[40]

Interestingly, the court *in dicta* stated, "Adding an additional characteristic is consistent with the power to define and delimit, but that power is not unbounded."[41] It further explained that a characteristic that differed so broadly in scope from the original that it effectively replaced it would raise serious questions.[42] A proxy may not yield different results than the characteristic Congress originally chose because that proxy would be replacing the terms, as opposed to defining and delimiting them. This *dicta* would become the foundation for *Texas v. Department of Labor* or "*Plano*,"[43] which would strike down the new rule that increased minimum salary level on a rolling basis.[44] The 5th Circuit may have been communicating

to the lower court in the Eastern District of Texas when this type of rule circumvents agency authority and the analysis to apply to such a situation. In *Plano*, the court would ultimately find that the proxy overcame the original characteristic.[45]

The *Mayfield* court also included an interesting note regarding *Skidmore* deference, which allows the court to defer to an agency's interpretation of a statute.[46] The weight given to the agency's interpretation "depends on the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier pronouncements, and all those factors which give it power to persuade."[47] The 5th Circuit seemed to question whether this deference still stands given the pronouncement in *Loper Bright* that "statutes have a 'best reading ... the reading the court would have reached if no agency were involved,' and 'in the business of statutory interpretation, if it is not the best, it is not permissible.'"[48] The court pointed out that this essentially means that *Skidmore* deference no longer exists. If the agency's interpretation is the best, then it needs no deference because it is the interpretation the court would have reached. If it is not the best, it gets no deference because if it is not the best, deference is not permissible. The court did not address whether there can be multiple "best" readings of a statute, as reasonable minds can differ. Notwithstanding the questions it brought up, the court left it for another day because it found that the DOL's interpretation of the exemption is the "best."[49] It went on to point out that whatever is left of *Skidmore* deference would apply here. The DOL has consistently issued minimum salary rules to define and delimit the exemption and has done so since the FLSA was passed.[50] Moreover, Congress has amended the FLSA several times and has not once questioned the Minimum Salary Rule.[51]

Nondelegation Doctrine

Mayfield also asserted that the EAP exemption violated the nondelegation doctrine because it lacked "an intelligible principle to guide the DOL's power to define and delimit the EAP exemption's terms."[52] The nondelegation doctrine asks whether Congress has impermissibly delegated its own power or the power of another branch to an agency. Power delegated to an agency violates the nondelegation doctrine when Congress delegates power without an intelligible principle that constrains the delegation. The intelligible principle test requires that Congress "set out guidance that 'delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.'"[53] This standard is not demanding.

The court agreed with the district court that there are at least two intelligible principles. The first of these is the "FLSA's statutory directive to eliminate substandard labor conditions that are detrimental to the health, efficiency, and general wellbeing of workers."[54] The second is the language of the exemption itself.[55] Each of these provisions provides guidance to the DOL on how it should exercise its authority. While these provisions are not straightforward, the existing standard is not demanding.[56] An intelligible principle needs only to be a guide for an agency; here, that guide exists. Thus, the DOL's authority to define and delimit the terms of the EAP exemption is guided by an intelligible principle.[57]

The 2019 Rule Stands

The court affirmed the district court's ruling, finding that the 2019 Minimum Salary Rule did not exceed the DOL's statutorily conferred authority. Nor did it violate the nondelegation doctrine. Thus, the rule was upheld.

THE APPLICATION OF *LOPER BRIGHT* CHANGES THE GAME

After the 5th Circuit's decision in *Mayfield*,[58] one might believe the DOL's authority to raise the salary basis for the EAP exemption was well established. However, such is not the case. Remember that *dicta* quote from *Mayfield*:

> Adding an additional characteristic is consistent with the power to define and delimit, but that power is not unbounded. A characteristic with no rational relationship to the text and structure of the statute would raise serious questions. And so would a characteristic that differs so broadly in scope from the original that it effectively replaces it.[59]

This quote would become the basis upon which the court in *Plano Chamber of Commerce, et al. v. U.S. Department of Labor, et al.*,[60] would vacate the 2024 DOL regulations on the minimum salary for the EAP exemption.

Issues in Plano Chamber of Commerce

In *Plano Chamber of Commerce,* the Plano Chamber of Commerce (hereinafter the "chamber") was challenging the 2024 rule issued by the DOL that raised the minimum salary for the EAP[61] exemption for overtime under the FLSA. The rule consisted of three distinct actions:

1) Effective July 1, 2024, the rule raised the minimum salary for the EAP exemption from $684 a week to $844 a week;
2) Effective Jan. 1, 2025, the rule raised the minimum salary for the EAP exemption from $844 a week to $1,128 a week; and
3) The rule implemented a mechanism for an automatic increase in the minimum salary level based on contemporary earnings data every three years.[62]

The chamber argued the 2024 rule exceeded the DOL's authority because it increased "the minimum salary for the EAP Exemption to a level that effectively displace[d] the duties-based inquiry required by the FLSA's text with a predominant salary-level test."[63] The chamber noted three issues: The updating mechanisms were in excess of the statutory jurisdiction, authority or limitations granted to the DOL; the rule was arbitrary, capricious and an abuse of discretion; and it was not otherwise in accordance with the law.[64]

The Court's Application of Loper Bright

The court applied *Loper Bright*, noting, "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and the "exercise of such independent judgment ... is rooted in the 'solemn duty' imposed on courts under the Constitution."[65] The court quoted *Loper Bright* at length, observing that 5 USC §706 of the APA "directs that 'to the extent necessary to decision and when presented, [a] reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."[66]

The APA also requires a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with the law."[67] "Courts decide legal questions by applying their own judgment."[68] Even though a statute may authorize an agency to exercise a degree of discretion or even expressly delegate authority to an agency, "the role of reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits."[69] The court noted that this entailed three different aspects:

1) Recognizing Constitution delegations;
2) Fixing boundaries of delegated authority; and
3) Ensuring the agency has engaged in "reasoned decisionmaking" within the established boundaries.[70]

The court noted that statutory interpretation starts with the text of the statute, but if there is an ambiguity "about the scope of an agency's own power ... abdication in favor of the agency is least appropriate."[71]

Plano Chamber of Commerce *Analysis and Holding*

The court did an exhaustive review of the DOL's actions in regard to the EAP exemption and the setting of a minimum salary basis for the EAP exemption, reviewing all the salary bases from 1938 to the present. The court found that the 2024 rule was an unlawful exercise of the DOL's power. Some of the key findings of the court include: The terms professional, executive and administrative are defined based on their functions or duties – "It's their duties and not their dollars that really matter."[72] The DOL does have the power to define and delimit the terms of the EAP exemption, which does include the "creation of regulations imposing a minimum salary level for the [EAP] exemption."[73] However, the DOL exceeded the authority delegated by Congress.[74] The DOL

After the 5th Circuit's decision in *Mayfield*,[58] one might believe the DOL's authority to raise the salary basis for the EAP exemption was well established. However, such is not the case.

Companies benefit from certainty and the ability to implement long-term strategic planning. *Loper Bright* injects uncertainty, which comes with the inability of a company to financially forecast and implement long-term staffing and resource allocation, which could lead to wage uncertainty and potential job and market instability.

cannot enact rules that "replace or swallow" the meaning of the terms used in the statute, which focus on the functions or duties in determining an employee's exempt status.[75] Applying this analysis to the minimum salary level, the court found that the use of the new minimum salary level would yield different results than the characteristics Congress chose – in other words, the minimum salary level was not defining and delimiting the exemption but was replacing the original statutory terms related to functions or duties.[76] "The Department's authority to define and delimit the EAP Exemption's terms through the addition of a proxy characteristic like salary, which is not included in the statutory text, 'is not unbounded.'"[77] The court found that the minimum salary level had swallowed or replaced the statutory test of functions or duties, replacing these with a proxy that "frequently yields different results than the characteristic Congress initially chose."[78]

To support its decision that the minimum salary level had swallowed the functions or duties test, the court reviewed the DOL's historical approach to the salary level. Historically, the minimum salary test, since 1958, had been set so "no more than about 10 percent of those in the lowest-wage region [the South], or in the smallest size establishment group, or in the smallest sized city group or in the lowest-wage industry of each of the [industry] categories would fail to meet the test."[79] This would become known as the Kantor Method.[80] The idea was that the minimum salary level should not disqualify more than 10% of EAP-exempt employees as determined by the long duties test.

However, in 2004, the DOL moved away from the Kantor Method and only adopted some of the factors set forth in the method. The 2004 rule selected a minimum salary level based on a wage distribution of all salaried employees rather than a distribution of exempt employees, and it accounted for some factors, such as region and industry, but not all four factors used under the Kantor Method. Most importantly, in 2004, it moved the percentage of those disqualified from 10% to 20%. Interestingly, in 2004, the DOL considered and rejected the possibility that the minimum salary level could be automatically adjusted without going through the rulemaking process, stating that the department found "nothing in the legislative or regulatory history [of the FLSA] that would support indexing or automatic increases."[81]

In 2016, the DOL attempted to move to a single test structure, away from the long and short test, and increase the minimum salary level, moving the percentile from 20% to 40% of the weekly earnings of full-time, salaried workers in the South and implementing a mechanism to automatically update the salary level triennially.[82] Thus, the DOL only used one of the Kantor Method's four-part test, focusing solely on the lowest-wage census region, the South. Thus, the 2016 rule did not consider the smallest-sized business establishment, the smallest-sized city group or the lowest-wage industry, as used in the earlier rulemaking.[83]

The court noted that the 2016 rule went beyond the DOL's statutory authority and reflected a substantive change that only Congress could effectuate and had been stricken by the courts in *Nevada I* and *Nevada II*.[84] The *Nevada II* court held that the DOL

was without power to displace the FLSA's duties-based test with an exclusive or predominantly salary-level test and held that the automatic update mechanism was invalid.[85] Interestingly, the DOL, in 2019, in a turnabout from their position in 2016, stated that the 2016 final rule on the minimum salary increase was in tension with the FLSA and the department's longstanding policy of setting the salary level at a level that did not disqualify a substantial number of those exempt under the EAP exemption and noted that a salary level set that high did not further the purposes of the FLSA.[86]

The court relied heavily on the *Nevada II* decision and the DOL's position in 2004 on automatic update mechanisms in holding that the automatic update mechanism in the 2024 rule exceeded the DOL's authority. Key to the court's analysis was that the regulations specifically restricted the DOL to defining and delimiting the EAP exemption through the active process of rulemaking, and the automatic update mechanism specifically circumvented the active process of rulemaking. There is no notice or comment period in the automatic update mechanism.[87] The DOL is authorized to define and delimit the EAP exemption only through the active, repeated process of passing regulations that comply procedurally and substantively with the APA, specifically the notice and comment process.

Further, the court found that the 2024 rule effectively displaced the FLSA's duties test with a predominant, if not exclusive, salary level test, noting that the 2024 test took the minimum salary level from the 20th percentile in 2004 to the 35th percentile as of January 2025.[88] Because it displaced the duties test, it exceeded the DOL's authority to define and delimit the relevant terms and was in excess of the DOL's statutory jurisdiction.[89]

On Nov. 15, 2024, the court ultimately vacated the 2024 rule – even though, effective July 1, 2024, the minimum salary for the EAP exemption had been raised from $684 per week to $844 per week. The court vacated all three portions of the 2024 rule.

THE LONG-TERM IMPACT OF *LOPER BRIGHT*

Importantly, *Loper Bright* has the capacity to impact an employer's ability to plan its everyday business activities. From noncompete rules to salary exemptions for overtime pay to Occupational Safety and Health Administration investigations, the impact of *Loper Bright* will continue to be felt. Uncertainty will prevail for employers as they try to comply with the various regulations while legal action pursuant to *Loper Bright* proceeds. Using the 2024 rule as an example – it was in effect six months *before* the courts reversed the 2024 rule – employers were faced with three options: comply with the statute and adjust salaries to keep employees exempt; reclassify traditionally exempt employees into nonexempt and pay overtime; or do nothing and risk that the rule would *not* be reversed, leaving the employer vulnerable to wage and hour lawsuits for overtime.

Companies benefit from certainty and the ability to implement long-term strategic planning. *Loper Bright* injects uncertainty, which comes with the inability of a company to financially forecast and implement long-term staffing and resource allocation, which could lead to wage uncertainty and potential job and market instability. When businesses have certainty, they are able to make informed decisions, manage risk and plan for the future. This uncertainty is counterbalanced by one important benefit of *Loper Bright*: the ability to challenge regulations that an employer believes exceed an agency's statutory authority. The challenge for the courts is striking a balance between the need for certainty and the need to regulate an agency's exercise of its authority.

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ENDNOTES

1. *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024).
2. *See Chevron U.S.A., Inc. v. Nat'l Res. Def. Council*, 467 U.S. 837 (1984).
3. *Loper Bright Enterprises*, 603 U.S. at 412.
4. *Id.*
5. *Id.* at 371.
6. *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799 (2024).
7. *Ryan, LLC v. Fed. Trade Comm'n*, No. 3:24-CV-00986-E, 2024 WL 3879954 (N.D. Tex. Aug. 20, 2024).
8. *Rest. L. Ctr. v. United States Dep't of Lab.*, 120 F.4th 163, 167 (5th Cir. 2024).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 176.
13. 29 U.S.C. §§206, 207.
14. *Id.* §203(e)(1).
15. *Mayfield v. United States Dep't of Lab.,* 117 F.4th 611, 614 (5th Cir. 2024).
16. 29 U.S.C. §207, 213(a)(1).
17. *Id.*
18. *Mayfield,* 117 F.4th at 614.
19. *Id.*
20. *Id.*
21. 84 Fed. Reg. 51230, 51231.
22. *Mayfield,* 117 F.4th at 615.
23. 5 U.S.C. §706.
24. *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 716, 732 (2022).
25. *Mayfield,* 117 F.4th at 616 (citation omitted).
26. *Id.*
27. *Id.*
28. *Id.* (citation omitted).
29. *Id.*
30. *Id.* (emphasis added).
31. *Id* at 615.
32. *Id.* at 617 (quoting *Loper Bright Enterprises v. Raimondo,* 603 U.S. ___, Slip Op. at 3 (June 28, 2024)).
33. *Id.* at 2268.
34. 29 U.S.C. 213(a)(1).
35. *Mayfield v. United States Dep't of Lab.,* 117 F.4th 611, 617.
36. *Id.* at 618.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.* (citation omitted).
41. *Id.* at 618-19.
42. *Id.*
43. The state of Texas and the Plano Chamber of Commerce, along with other business organizations, filed separate lawsuits challenging the DOL's overtime rule, which increased the salary threshold for exempt employees. These cases were consolidated. This case may be referred to herein as "*Texas v. DOL" or "Plano Chamber of Commerce" or "Plano."*
44. *Texas v. United States Dep't of Lab.,* No. 4:24-CV-499-SDJ, 2024 WL 3240618 (E.D. Tex. June 28, 2024).
45. *Id.*
46. *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).
47. *Id.* at 140.
48. *Id.* (quoting *Loper Bright,* Slip Op. at 23).
49. *Id.* at 619.
50. *Id.*
51. *Id.*
52. *Id.* at 621.
53. *Id.* at 620 (quoting *Mistretta v. United States,* 488 U.S. 361, 273-73 (1989) (citation omitted)).
54. *Id.* at 621; 29 U.S.C. §202(a), (b).
55. *Id.* §213(a)(1).
56. *Id.*
57. *Id.*
58. *Supra.*
59. *Id.* at 618-19.
60. *Texas v. United States Dep't of Lab.*, 756 F. Supp. 3d 361 (E.D. Tex. 2024).
61. Executive, administrative and professional exemption.
62. 89 Fed. Reg. 32842 (April 26, 2024) 29 CFR §541.0-541.710, hereinafter referenced as the "2024 rule."
63. *Texas,* 756 F. Supp. 3d at 369 (E.D. Tex. 2024).
64. *Id.* at 382.
65. *Id.* at 381, quoting *Loper Bright, supra* at 385.
66. *Id.* at 381, internal citations omitted.
67. *Id.*
68. *Id.*, quoting *Loper Bright*, *supra* at 371.
69. *Id.*, quoting *Loper Bright*, *supra* at 371 (internal citations omitted).
70. *Id.*
71. *Id.* at 382, quoting *Loper Bright*, *supra* at 373.
72. *Id.* at 384.
73. *Id.* at 385.
74. *Id.* at 382.
75. *Id.* at 385.
76. *Id.*
77. *Id.* citing *Mayfield*, *supra* at 618-19.
78. *Id.*
79. *Id.* at 372 citing the "Report and Recommendations on Proposed Revision of Regulations," Part 541, Harry S. Kantor, presiding officer 6-7 (March 3, 1958) "Kantor Report."
80. *Id.*
81. *Id.* at 376, citing 69 Fed. Reg. 22171.
82. *Id.* at 375-76, citing 81 Fed. Reg. 32393, 32440.
83. *Id.* at 376.
84. *Id.* at 19. *See*, *Nevada v. United States Dep't of Lab.,* 218 F. Supp. 3d 520, 526-33 (E.D. Tex. 2016) ("Nevada I"); *Nevada v. United States Dep't of Lab.,* 275 F. Supp. 3d 795, 805-08 (E.D. Tex. 2017) ("Nevada II").
85. *Nevada II*, *supra* at 807-08.
86. *Texas v. DOL*, *supra* at 390, citing 84 Fed. Reg. 51236. No doubt this change in position by the DOL was due to the change in administrations between 2016 and 2019.
87. *Id.* at 386.
88. *Id.* at 386.
89. *Id.* at 390.

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Catch-22: Temporary Injunctions Under the Uniform Trade Secrets Act

By Christopher A. Shrock

ONCE UPON A TIME, A TRUSTED AGENT ABSCONDED with his principal's trade secrets and confidential business information, leveraging them for pay, perks and prestige in a new position under a new principal, a direct competitor of his former master. The master, upon discovering the wreckage of deleted emails and scrubbed hard drives, initiated a "rapid, expedited, high-stakes confrontation" in the local court to stop the disloyal agent before the competitor learned her secrets or leveraged them in the marketplace.[1]

Foremost, she feared the loss of her secrets.[2] Looking to the Uniform Trade Secrets Act (UTSA), she saw that courts could enjoin *actual* or *threatened* trade secret misappropriation to mitigate a thief's unfair commercial advantage.[3] Hopeful, the principal-turned-plaintiff heaved her forensic evidence onto the judge's desk, announcing triumphantly, "There! He stole my secrets! *Actual* misappropriation! Please, stop him, or he'll ruin me before we even litigate the case!"

Shaking his head, the judge responded, "No, this purported misappropriation is in the past. You may sue for damages, but injunctions are for preventing *future* harms."[4]

Undeterred, the master tried again, "Then, he is *threatening* misappropriation! He took my secrets and now serves my competitor! Please, stop him!"[5]

"Slow down," replied the judge. "Before I go enjoining anyone, can you satisfy the elements for a temporary injunction: 1) likely success on the merits, 2) irreparable harm if the injunction is denied, 3) balancing of equities and 4) public interest?[6] If you can, to a clear and convincing degree, I'll grant your motion."

The master narrowed her focus to the first element. "What do I need for likelihood of success on the merits?"

"You must show the trade secret's existence, its misappropriation and its use by the defendant to your detriment."[7]

"But I'm asking you to *prevent* my detriment! To my knowledge, he hasn't *used* my secrets yet. That's why I'm here, to stop him, to keep my secrets secret."

"No, you're quite right. I can't enjoin him after he uses the secrets," answered the judge. "That would make the injunction past looking. You've got to show that the thief is poised to *continue* misappropriating in the future, or the injunction would do you no good."[8]

"So before he uses my secrets, you won't enjoin him because I can't show misappropriation. After he uses my secrets, you won't enjoin him because my secret will be out anyway?" the master asked, hanging her head.

"Quite right!" responded the judge. "Motion for temporary injunction denied!"

This story plays out in reality. In *AFGD v. Tri-Star Glass*, an employer lost six workers to a competitor, taking confidential price and

customer information with them.[9] The employer sought an injunction to stop the bleeding. However, the court found no threat of misappropriation because the competitor had neither completed its manufacturing facility nor taken the trade secret owner's customers – yet.[10] The employer presented evidence of the theft and argued an unauthorized disclosure was inevitable given the employees' new roles, but the court neither recognized a theory of inevitable misappropriation nor volunteered an alternative theory.[11] The employer could not obtain an injunction to prevent an *initial* injury.[12]

Why is it so difficult to obtain an injunction when the UTSA expressly authorizes them? Is §2 at odds with the common law? It shouldn't be since the UTSA "codifies the basic principles of common law trade secret protection" rather than revolutionizing them.[13] The UTSA's call for enjoining "actual or threatened misappropriation" even echoes a line from the *Restatement of Torts*: "The defendant is committing or is threatening to commit a wrong."[14] Still, trade secret plaintiffs struggle to satisfy the injunction factors, especially before discovery.

The last three factors – 2) irreparable harm if the injunction is denied, 3) balancing of equities and 4) public interest – are relatively easy for a credible plaintiff.[15] Courts presume the second factor because misappropriation could irreparably destroy a trade secret.[16] Often, factor three tilts in the plaintiff's favor because an injunction that orders compliance with an existing obligation – *e.g.*, to refrain from using or disclosing trade secrets – does no harm to the defendant.[17] Indeed, some courts use the balance of equities and associated bond amounts to

tailor their injunctions, preventing unfairness to defendants.[18] Similarly, factor four weighs in the plaintiff's favor because compliance with the law is in the public interest.[19] The trouble, then, lies with the first factor: likelihood of success on the merits.[20]

In a typical trade secret case, evidentiary support for likelihood of success on the merits falls short of the common law's expectations. Under the common law, the court grants a temporary injunction "to prevent the defendant from doing an action that has not yet been proved to be a violation of the plaintiff's legal rights."[21] The action is known, but its legal significance is not. The *Restatement of Torts* lists examples of committing waste, passing off goods and undermining the support of land – all relatively conspicuous wrongs. In *McGinnity v. Kirk*, when a mortgagee motioned to enjoin a mortgagor for failing to care for a property, the overgrowth and dilapidated fence were plainly visible.[22] In *Sharp v. 251st St. Landfill*, when neighbors sought an injunction to prevent the construction of a landfill, the building site and construction specifications were publicly documented.[23]

Not so for trade secret thefts. Self-respecting corporate spies misappropriate their employers' confidential information covertly. The *AFGD* plaintiff knew a rival had hired its employees with confidential information, but it did not know their specific use of that information. The question was not whether the defendant's *known* actions would violate the plaintiff's rights, as presumed in the *Restatement of Torts*, but what the defendants were doing with the plaintiff's secrets in private. How can a plaintiff prove success on the merits of a misappropriation claim without definitive evidence of how the defendant is using the plaintiff's information?

In some jurisdictions, they don't have to. Under the Inevitable Disclosure Doctrine, a plaintiff can show via circumstantial evidence that the "defendant's new employment will inevitably lead him to rely on the plaintiff's trade secrets."[24] Other states lower the plaintiff's burden by requiring only *prima facie* evidence of success on the merits.[25] But these accommodations are unavailable in Oklahoma, where the first factor dominates the temporary injunction analysis.[26] Federal courts in the 10th Circuit also require likelihood of success on the merits before granting a preliminary injunction.[27]

Then, to obtain a temporary injunction, a plaintiff may seek a lower evidentiary burden on the first factor. This is not unreasonable. Before 2016, federal courts recognized a relaxed "sliding scale" standard: If the plaintiff succeeded decisively on the other factors, then the court would grant an injunction upon finding "questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation."[28] However, since *Winter v. National Resources Defense Council*, in which the Supreme Court held the irreparable harm factor (not likelihood of success on the merits) essential, the 10th Circuit requires all four preliminary injunction factors.[29] A return to the sliding scale, or its adoption by state courts, would bring injunctive relief back into view for trade secret plaintiffs.

Alternatively, a lighter burden may be implicit under the UTSA. UTSA §2(a) says, "Actual or threatened misappropriation may be enjoined." Misappropriation is an improper acquisition, disclosure or use of a trade secret.[30] But what distinguishes actual from threatened? *First*, actual/threatened cannot be synonymous with past/future. Past torts can't be enjoined, and both actual and threatened misappropriations are enjoinable; therefore, both actual and threatened misappropriations must be ongoing or future. *Second*, the UTSA offers no separate basis for a claim of "threatened" trade secret misappropriation as opposed to "actual" misappropriation.[31] They are not separate torts. *Third*, "actual" can mean "existing in reality" or "occurring at the time," but "threatened" means "to give signs or warning of" or "to hang over dangerously."[32] In other words, a threatened misappropriation may cause alarm, but it needn't materialize as a completed tort. Most likely, then, "threatened" misappropriations risk violating the plaintiff's rights *without actually violating them* – otherwise, they would be "actual." Thus, arguably, UTSA §2(a) expands the courts' authority to enjoin not only a misappropriator but also one who stops short of completing a misappropriation – that is, someone against whom a plaintiff would not succeed on the merits.[33] Hence, the statute permits injunctions apart from the first common law factor.

CONCLUSION

To succeed on a motion for a temporary injunction, a trade secret plaintiff may need an exception to the first injunction factor, likelihood of success on the merits, because evidence of the defendant's private use or disclosure

isn't forthcoming, as with other torts. The plaintiff has at least two arguments for the exception. First, by adopting a "sliding scale," a court could relax the first factor when it finds the other three weigh in the plaintiff's favor. Second, the court could interpret UTSA §2(a) as authorizing injunctions even when the plaintiff would not succeed on the merits. The court can tailor its order or adjust the plaintiff's bond to prevent unfairness to the defendant. Without some exception, a plaintiff's task to save its stolen trade secrets may prove insurmountable.

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ENDNOTES

1. Yaman Desai and Michael K. Hurst, *IX. Starting Out with a Bang: Seeking Injunctive Relief for Trade Secret Misappropriation*, in "Mapping The Battleground: Trade Secret Misappropriation in Texas State and Federal Courts," TX CLE Intellectual Property Law Workshop (2022). ("Trade secrets cases are often effectively won or lost within weeks of the lawsuit being filed.").

2. *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir.2009) ("Once lost, [a trade secret] is lost forever.").

3. *E.g.*, Okla. Stat. tit. 78, §87(A); Uniform Trade Secrets Act (UTSA) §2(a). UTSA §2(c) authorizes mandatory injunctions – *e.g.*, "surrender of the stolen information" – as well.

4. *Pre-Paid Legal Servs., Inc. v. Cahill*, 924 F. Supp. 2d 1281, 1289 (E.D. Okla. 2013) (explaining injunctions cannot remedy past harms).

5. According to some, a court should only issue a temporary injunction for threatened misappropriation since an injunction would be powerless to stop a past misappropriation. *IP Litigation Guide: Patents & Trade Secrets* §10:9.

6. *Restatement (Second) of Torts* §936 cmt. e (1979); *see, e.g., Celebrity Attractions, Inc. v. Oklahoma City Pub. Prop. Auth.*, No. CIV-15-1267-HE, 2016 WL 126882, at *3 (W.D. Okla. Jan. 11, 2016), aff'd, 660 F. App'x 600 (10th Cir. 2016); *ProLine Prod., L.L.C. v. McBride*, 2014 OK CIV APP 34, ¶3, 324 P.3d 430, 432.

7. *Micro Consulting, Inc. v. Zubeldia*, 813 F. Supp. 1514, 1534 (W.D. Okla. 1990), aff'd, 959 F.2d 245 (10th Cir. 1992); *see also* Oklahoma Uniform Jury Instructions, Chapter 29.1.

8. *Chilcutt Direct Mktg., Inc. v. A Carroll Corp.*, 2010 OK CIV APP 58, ¶16, 239 P.3d 179, 183 (emphasis added).

9. *AFGD, Inc. v. Tri-Star Glass, Inc.*, 2005 WL 8175945 (N.D. Okla. June 7, 2005).

10. *AFGD, Inc. v. Tri-Star Glass, Inc.*, 2005 WL 8175945, at *4 (N.D. Okla. June 7, 2005).

11. *Id.*; *see also PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995).

12. California law exhibits a similar catch-22. There, threatened trade secret misappropriation means an "imminent" misuse manifested by a defendant's words or conduct. Unless the thief has previously misused or disclosed the secrets, a plaintiff must prove the thief's intent to use them, typically from the thief's private communications. In other words, to prevent a first harm, a California plaintiff needs clear and convincing evidence that, probably, will emerge late in discovery – too late. *See FLIR Sys., Inc. v. Parrish*, 174 Cal. App. 4th 1270, 1279, 95 Cal. Rptr. 3d 307, 316 (2009) (citing to *Cent. Valley Gen. Hosp. v. Smith*, 162 Cal. App. 4th 501, 527, 75 Cal. Rptr. 3d 771, 791 (2008)); *Interbake Foods, L.L.C. v. Tomasiello*, 461 F. Supp. 2d 943, 973 (N.D. Iowa 2006); *Del Monte Fresh Produce Co. v. Dole Food Co.*, 148 F. Supp. 2d 1326, 1338 (S.D. Fla. 2001) (calling for a "substantial threat of impending injury").

13. *Prefatory Note*, Uniform Trade Secrets Act with 1985 amendments. The *Prefatory Note* also complains that the *Restatement (Second) of Torts* omitted material from *Restatement (First) of Torts* §757, cmt. (b) (1939), which authorized injunctive relief for trade secret misappropriations.

14. *Restatement (Second) of Torts* §936, cmt. e (1979).

15. *Restatement (Second) of Torts* §936 cmt. e (1979); *see, e.g., Celebrity Attractions, Inc. v. Oklahoma City Pub. Prop. Auth.*, No. CIV-15-1267-HE, 2016 WL 126882, at *3 (W.D. Okla. Jan. 11, 2016), aff'd, 660 F. App'x 600 (10th Cir. 2016); *ProLine Prod., L.L.C. v. McBride*, 2014 OK CIV APP 34, ¶3, 324 P.3d 430, 432.

16. *Skycam, LLC v. Bennett*, 2012 WL 4483610, at *2 (N.D. Okla. Sept. 27, 2012); *see also Kendall Holdings, Ltd. v. Eden Cryogenics LLC*, 630 F.Supp.2d 853, 867 (S.D. Ohio 2008); *Computer Assocs. Int'l v. Quest Software, Inc.*, 333 F.Supp.2d 688, 700 (N.D. Ill. 2004); *Union Nat'l Life Ins. Co. v. Tillman*, 143 F.Supp.2d 638, 641-42 (N.D. Miss. 2000); *Tracer Research Corp. v. Nat'l Env't Serv. Co.*, 843 F.Supp. 568, 582 (D. Ariz. 1993); *Boston Scientific Corp. v. Lee*, 2014 WL 194687 (D. Mass.); *Software Pricing Partners, LLC v. Geisman*, 2022 WL 3971292 (W.D.N.C.); *Xerox Corporation v. O'Dowd*, 2006 WL 3053408 (M.D. Tenn.); *HCAFranchise Corporation v. Alisch*, 2016 WL 10706285 (N.D. Ind.); *Lumex, Inc. v. Highsmith*, 919 F.Supp. 624 (E.D.N.Y.).

17. *Pre-Paid Legal Servs., Inc. v. Cahill*, 924 F. Supp. 2d 1281, 1291 (E.D. Okla. 2013).

18. *See Yakus v. United States*, 321 U.S. 414, 440, 64 S. Ct. 660, 675, 88 L. Ed. 834 (1944); The Sedona Conference Commentary on Equitable Remedies in Trade Secret Litigation, 23 *Sedona Conf. J.* 591, 700 (2022).

19. *Pre-Paid Legal Servs., Inc. v. Cahill*, 924 F. Supp. 2d 1281, 1291 (E.D. Okla. 2013); *see also Edwards Lifesciences Corp. v. Maximilien*, 2023 WL 4680774 (C.D. Cal.); *Pareto Health (AL), LLC v. WeCare TLC, LLC*, 2021 WL 4860760 (N.D. Ala.); *Northwood, Inc. v. Clinical Would Solutions, LLC*, 2021 WL 1345574 (E.D. Mich.); *Acceleration Products, Inc. v. Arikota, Inc.*, 2014 WL 3900875 (D. Utah).

20. *Crystal Bay Ests. Homeowners' Ass'n, Inc. v. Cox*, 2022 OK CIV APP 38, ¶12, 521 P.3d 812, 817 (citing to *Dowell v. Pletcher*, 2013 OK 50, 304 P.3d 457, as corrected (July 15, 2013)).

21. *Restatement (Second) of Torts* §936, cmt. e (1979).

22. *McGinnity v. Kirk*, 2015 OK 73, 362 P.3d 186.

23. *Sharp v. 251st St. Landfill, Inc.*, 1991 OK 41, 810 P.2d 1270, overruled on other grounds by *DuLaney v. Oklahoma State Dep't of Health*, 1993 OK 113, 868 P.2d 676.

24. *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995).

25. *E.g., Horner Int'l Co. v. McKoy*, 232 N.C. App. 559, 570, 754 S.E.2d 852, 860 (2014).

26. *Crystal Bay Ests. Homeowners' Ass'n, Inc. v. Cox*, 2022 OK CIV APP 38, ¶12, 521 P.3d 812, 817 n.6 (rejecting the sliding-scale analysis and also noting the essentiality of irreparable harm) (citing to *Dowell v. Pletcher*, 2013 OK 50, 304 P.3d 457, as corrected (July 15, 2013)).

27. *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016) (abrogating the relaxed standard).

28. *E.g., Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 781-82 (10th Cir. 1964); *Celebrity Attractions, Inc. v. Oklahoma City Pub. Prop. Auth.*, No. CIV-15-1267-HE, 2016 WL 126882, at *3 (W.D. Okla. Jan. 11, 2016) (applying the relaxed standard for likelihood of success).

29. *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016). The dissenting Judge Lucero recoiled from the majority's "wooden" application of *Winter* and tried in vain to persuade his peers of the common sense of the "sliding-scale" approach, but alas, he did not prevail. For the old "sliding-scale" rule, *see Star Fuel Marts, LLC v. Sam's E., Inc.*, 362 F.3d 639, 652 (10th Cir. 2004).

30. UTSA §1(2).

31. UTSA §2(a) is the only reference to threatened misappropriation in the statute.

32. Actual, *Merriam-Webster's Dictionary*, www.merriam-webster.com/dictionary/actual (last accessed June 30, 2025); Threaten, *Merriam-Webster's Dictionary*, https://bit.ly/40sxnAK (last accessed June 30, 2025).

33. *E.g., Assa Abloy Sales & Mktg. Grp., Inc. v. TASK*, Fcz, 2018 WL 691711, at *7 (D. Conn. Feb. 2, 2018) (using the UTSA Sect. 2 authorization to enjoin a defendant as an alternative to the four-part test).

Navigating the Differences Between Disparate Treatment and Failure-to-Accommodate Claims Under the Americans with Disabilities Act

By Amber L. Hurst

TITLE I OF THE AMERICANS WITH DISABILITIES ACT (ADA), 42 U.S.C. §§12111-12117, is unique among workplace anti-discrimination laws because it not only prohibits differential treatment based on a protected characteristic (disability) but, in some circumstances, also *compels* an employer to treat an individual with a disability differently than nondisabled employees. Section 12112(a) of the ADA sets out the rule prohibiting disability discrimination in the workplace:

> (a) General rule. No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Title 42 U.S.C. §12112(a) (hereinafter the disparate treatment prohibition) is consistent with the common understanding of the term "discriminate," which is to distinguish or differentiate based on a particular characteristic.[1] It is the taking of an action (*e.g.*, termination, promotion, etc.), and doing so based on disability, that constitutes discrimination against a qualified individual on the basis of disability.

However, the ADA also defines the term "discriminate against a qualified individual on the basis of disability" to include *not* taking particular action, specifically "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee" unless the employer "can demonstrate that the accommodation would impose an undue hardship."[2] Under this "accommodation mandate," an employer has an "*affirmative obligation* to make reasonable accommodation."[3]

This article addresses the differences between the ADA's disparate treatment prohibition and accommodation mandate – the "interactive process" under the ADA's accommodation mandate – and potential missteps in carrying out the accommodation process.

DIFFERENCES BETWEEN THE ADA'S DISPARATE TREATMENT PROHIBITION AND ACCOMMODATION MANDATE

There are several differences between the ADA's disparate treatment prohibition and accommodation mandate.

Different Definitions of 'Discriminate ... on the Basis of Disability'

Under the ADA's disparate treatment prohibition, the employer "discriminate[s] against a qualified individual with a disability" when it *takes an action* affecting the employee's terms, conditions and privileges of employment and does so on the basis of the employee's disability.[4] An employer does not violate the ADA's disparate treatment prohibition by *failing* to take some action affecting the terms, conditions or privileges of an individual's employment or by

Unlike a claim of disparate treatment under the ADA's disparate treatment prohibition, claims for failure to accommodate do *not* include the requirement that the employee suffered an adverse action.[19]

taking such action but *not* on the basis of disability.

In contrast, an employer runs afoul of the ADA's accommodation mandate by *failing to take an action* – that is, by "*not* making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability."[5]

Different Definitions of 'Disability' Apply

An individual has a "disability" under the ADA if they have one or more of the following: 1) an "actual disability," defined as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual"; 2) a record of such an impairment; and/or 3) the employer regards the employee as having such an impairment.[6] To make a claim under the ADA's disparate treatment prohibition, the plaintiff may rely on any or all of these three definitions of "disability."[7] In other words, the ADA's disparate treatment mandate prohibits an employer from "discriminat[ing] against a qualified individual on the basis of disability" notwithstanding whether the employee has a "disability" because they have an actual "physical or mental impairment that substantially limits one or more major life activities," because they have a "record of such an impairment" and/or because the employer "regards" them "as having such an impairment" (even if they do not actually have such an impairment).[8]

In contrast, a claim for failure to accommodate cannot be based on the "regarded as" definition set out in 29 C.F.R. §1630.2(g)(1)(iii).[9] Instead, the employer must show they have an actual disability,[10] a record of a disability[11] or both.[12]

A Failure-to-Accommodate Claim Does Not Require Proof of Discriminatory Intent

Because the ADA's disparate treatment prohibition only prohibits discrimination "on the basis of disability," there must be a nexus between the disability and the employment action.[13] This nexus is satisfied by proving the employer acted with discriminatory intent.[14]

In contrast, the ADA's accommodation mandate imposes on the employer an "*affirmative obligation* to make reasonable accommodation."[15] It is the employer's *failure* to offer a reasonable accommodation to an otherwise qualified individual with a disability that constitutes unlawful discrimination.[16] Because it is the employer's failure to meet its statutory obligation to "make reasonable accommodation" that results in a violation, there is no need to show the employer acted with discriminatory intent.[17] "Thus, the employee need present no evidence, whether direct or circumstantial, of discriminatory intent in order to succeed on a failure-to-accommodate claim."[18]

Element of an Adverse Action

Unlike a claim of disparate treatment under the ADA's disparate treatment prohibition, claims for failure to accommodate do *not* include the requirement that the employee suffered an adverse action.[19] In *Exby-Stolley*, the 10th Circuit explained that including an adverse action as a necessary element to a failure-to-accommodate claim would significantly frustrate the purposes of the ADA because:

> Employers would *not* be held accountable for failing to reasonably accommodate their disabled employees so long as those employers did not also subject their employees to an adverse employment action. How could the ADA's reasonable-accommodation mandate meaningfully help to ensure that qualified individuals with disabilities who have been denied a reasonable accommodation can "obtain the *same* workplace opportunities that those without disabilities automatically enjoy," *US Airways*,

535 U.S. at 397, and "enjoy the same level of benefits and privileges of employment" as their peers without disabilities, 29 C.F.R. pt. 1630, app. § 1630.9, if the statute is construed as providing such disabled individuals a failure-to-accommodate remedy *only* when their employers *also* have subjected them to an adverse employment action? To ask the question is to answer it: the ADA could not meaningfully effectuate its full-participation and equal-opportunity purposes, if so interpreted. And we thus decline to construe the statute in this way.[20]

Different McDonnell Douglas *Formulations*

Courts traditionally have analyzed disparate treatment claims under the three-step formulation first articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under the three-part *McDonnell Douglas* formulation test, the plaintiff bears the initial burden to establish a *prima facie* case of disparate treatment, which, if shown, gives rise to the presumption that the challenged adverse action was the result of unlawful discrimination.[21] The burden then shifts to the employer to rebut the plaintiff's *prima facie* case by articulating a legitimate, nondiscriminatory reason for the adverse employment action.[22] Once the first two steps are satisfied, the burden shifts back to the employee to proffer sufficient evidence allowing a jury to find that the employer's articulated explanation is pretextual.[23] This burden-shifting framework "is intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination."[24]

In contrast, because discriminatory intent is not an element of a failure-to-accommodate claim, the traditional *McDonnell Douglas* formulation is inapplicable. Instead, courts typically evaluate a failure-to-accommodate claim under a *modified McDonnell Douglas* burden-shifting framework.[25]

> The purpose of a burden shifting approach is a bit different in an ADA Failure to Accommodate case. In such a case, the Congress has already determined that a failure to offer a reasonable accommodation to an otherwise qualified disabled employee *is* unlawful discrimination.[26] Thus, we use the burden-shifting mechanism, not to probe the subjective intent of the employer, but rather simply to provide a useful structure by which the district court, when considering a motion for summary judgment, can determine whether the various parties have advanced sufficient evidence to meet their respective traditional burdens to prove or disprove the reasonableness of the accommodations offered or not offered.[27]

Under this modified framework, the plaintiff bears the initial burden to demonstrate a *prima facie* case consisting of evidence that they 1) are disabled, 2) are otherwise qualified and 3) requested a plausibly reasonable accommodation.[28] If the plaintiff makes a showing on all three elements, the burden shifts to the employer to either 1) conclusively rebut one or more elements of the plaintiff's *prima facie* case or 2) establish an affirmative defense such as undue hardship or another affirmative defense available to the employer.[29]

Required Participation in the 'Interactive Process'

The ADA's disparate treatment prohibition can be boiled down to the following formula: adverse action + protected characteristic (disability) + unlawful intent (on the basis of disability).[30]

> Since disparate-treatment claims concern discrimination in the form of an *action*, it naturally follows that a plaintiff alleging such a claim of discrimination must establish, *inter alia*, that there was both an employment action and that the action was undertaken with an intent that made it discriminatory, or phrased differently, that the action was taken "because of the disability."[31]

Under the disparate treatment prohibition, an employer is not required to take any particular action or follow a particular process to avoid engaging in "discrimination on the basis of disability." While an employer's failure to take certain steps, such as following progressive discipline, may constitute circumstantial evidence of the employer's discriminatory intent, the failure to take action is not itself a violation of the law.

In contrast, under the ADA's accommodation mandate, the employer has an affirmative duty to "mak[e] reasonable accommodations to the ... limitations of an ... individual with a disability."[32] To facilitate the reasonable accommodation the employer is required to make, the federal regulations implementing the ADA envision an interactive process in which the employer and employee are required to participate.[33] Under

this interactive process, the employer and employee are obligated to take certain steps necessary to facilitate the employer's duty to "make reasonable accommodations." The consequences of failing to participate in the interactive process could be severe and largely depend on which party failed to participate and why.

The remainder of this article addresses the requirements of the ADA interactive process and common missteps to avoid.

THE ADA INTERACTIVE PROCESS

The interactive process is a good-faith dialogue between the employer and employee designed to identify possible reasonable accommodations that would allow the employee to perform the essential functions of their position.[34] "The obligation to participate in this interactive process is inherent in the statutory requirement that the employer offer a disabled, but otherwise qualified employee a reasonable accommodation."[35] Good-faith participation by both parties is critical because "each side will possess different information, all of which is critical to determining whether there is a reasonable accommodation that might permit the disabled employee to perform the essential functions of her job."[36]

Purpose and Goals of the ADA Interactive Process

The purpose of the ADA interactive process is to identify what, if any, possible reasonable accommodations are available that will allow the employee with a disability to perform the essential functions of the position they hold or desire.[37] In order to identify possible reasonable accommodations, the ADA interactive process should answer two questions: 1) What are the employee's precise limitations resulting from the disability, and 2) what, if any, potential reasonable accommodations could overcome those limitations?[38] Participation by both parties is imperative because each side will possess different information, all of which is critical to determining whether there is a reasonable accommodation that might permit the employee with a disability to perform the essential functions of their position (or the position at issue, as discussed later).[39]

The Employer Must Attempt To Make Reasonable Accommodation Before the Employee Can Be Deemed Not 'Otherwise Qualified'

The ADA's accommodation mandate only requires an employer to make reasonable accommodations to the known mental or physical limitations of an "otherwise qualified individual with a disability."[40] Does this mean the employer can avoid attempting to accommodate by claiming the employee is not "qualified"? No. The ADA defines "qualified individual" as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."[41] Because "qualified individual" includes an individual who can only perform the essential functions *with* reasonable accommodation, the employer must at least attempt to provide a reasonable accommodation before the employee can be deemed *not* "otherwise qualified."[42]

Triggering the Interactive Process

The ADA interactive process usually begins with the employee making a request for accommodations for their disability.[43] Under most circumstances, the employer's duty to provide reasonable accommodations, or even to participate in the ADA interactive process, is only "triggered" when the employee makes an adequate request for accommodation.[44]

So what is an adequate request for accommodation? Quite simply, it is notice to the employer that the employee needs some adjustment in their job because of a medical condition.[45] A request for accommodation need *not* be in writing, come from the employee directly or use any particular words such as "reasonable accommodation."[46]

Who Gets To Choose Among Possible Reasonable Accommodations?

When there are multiple reasonable accommodations available, the employer – not the employee – gets to choose which to provide. As long as the accommodation allows the employee to perform the essential functions of their position, the employer has complied with its obligations, even if the employee would have preferred a different reasonable accommodation.[47]

What Happens if No Accommodations Exist That Would Allow the Employee To Perform the Essential Functions of Their Position?

It may be that after the parties engage in a mutual dialogue in good faith (*i.e.*, the interactive process), no reasonable accommodations can be identified that would allow the employee to perform the essential functions of the position they hold. However,

the inquiry does not stop there. The employer may be required to offer the employee with a disability reassignment to a vacant position.[48] A "vacant position" includes not only positions that are at the moment vacant but also positions the employer reasonably anticipates will become vacant in the fairly immediate future.[49] However, a "vacant position" does not include a promotion.[50]

Remember that the ADA requires an employer to make reasonable accommodations to an "otherwise qualified employee with a disability."[51] The term "qualified" means the "individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position."[52] In *Smith v. Midland Brake, Inc.*, the 10th Circuit held that a "reasonable accommodation" under the ADA may include reassignment from the employee's current job to a "vacant position" for which the employee can perform the essential functions of with or without accommodation.[53] To determine whether reassignment is a reasonable accommodation, the employer and employee may be required to engage in the same interactive process that applied to the position the employee held at the time they sought accommodation.[54]

CONCLUSION

This article certainly does not address every issue relevant to ADA litigation. Many issues – such as how to identify an "essential function" or rebut a claim of "undue hardship" – are worthy of their own articles. However, I hope the article does provide some guidance in navigating the less-than-clear accommodation process.

ABOUT THE AUTHOR

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ENDNOTES

1. *See, e.g., Merriam-Webster Dictionary*, defining "discriminate" as "to mark or perceive the distinguishing or peculiar features of," to "distinguish" or "differentiate," and "to distinguish by discerning or exposing differences." www.merriam-webster.com/dictionary/discriminate; *see also Black's Law Dictionary* (11th ed. 2019), defining "discrimination" as "differential treatment."
2. 42 U.S.C. §12112(b)(5)(A).
3. *Exby-Stolley v. Bd. of Cty. Comm'rs*, 979 F.3d 784, 795 (10th Cir. 2020), emphasis in original.
4. 42 U.S.C. §12112(a) ("No covered entity shall discriminate against a qualified individual on the basis of disability *in regard to* job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.") (emphasis supplied).
5. 42 U.S.C. §12112(b)(5)(A), emphasis added.
6. 29 C.F.R. §1630.2(G)(1), (2).
7. 29 C.F.R. §1630.2(g)(3).
8. 29 C.F.R. §1630.2(g)(1), (2).
9. 29 C.F.R. §1630.2(g)(3).
10. §1630.2(g)(1)(i).
11. §1630.2(g)(1)(ii).
12. 29 C.F.R. §§1630.2(g)(3) and (k)(3).
13. *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017).
14. *Id.*
15. *Exby-Stolley,* 979 F.3d at 795, emphasis in original.
16. *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1178 n.12 (10th Cir. 1999), explaining.
17. *Exby-Stolley,* 979 F.3d at 798.
18. *Punt,* 862 F.3d at 1048.
19. *Exby-Stolley,* 979 F.3d at 798-99.
20. *Id.* at 799, emphasis in original.
21. *Gossett v. Okla. ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001).
22. *Id.*
23. *Smothers v. Solvay Chems., Inc.*, 740 F.3d 530, 539 (10th Cir. 2014).
24. *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 n.8, 101 S. Ct. 1089, 1094 (1981).
25. *Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1204 (10th Cir. 2018); *see also Smith,* 180 F.3d 1154 at 1178 n.12, explaining the purpose of the modified framework.
26. *See* 42 U.S.C. §12111(b)(5)(A) ("the term 'discriminate' includes ... not making reasonable accommodations.").
27. Emphasis in original.
28. *Id.*
29. *Id.*
30. *See Exby-Stolley,* 979 F.3d at 798.
31. Emphasis in original.
32. 42 U.S.C. §12112(b)(5)(A).
33. 29 C.F.R. §1630.2(o)(3); *Aubrey v. Koppes*, 975 F.3d 995, 1009 (10th Cir. 2020); *EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1049 (10th Cir. 2011).
34. *Aubrey,* 975 at 1006-07.
35. *Id.* at 1007.
36. *Id.*
37. *Id.*
38. 29 C.F.R. §1630.2(o)(3).
39. *Aubrey,* 975 F.3d at 1007.
40. 42 U.S.C. §12112(b)(5)(A).
41. 42 U.S.C. §12111(8).
42. *Wilkerson v. Shinseki*, 606 F.3d 1256, 1265 (10th Cir. 2010).
43. *C.R. Eng., Inc.*, 644 F.3d at 1049.
44. *Id.*
45. *Foster v. Mt. Coal Co., LLC*, 830 F.3d 1178, 1188 (10th Cir. 2016).
46. *Id.*
47. *Norwood v. UPS*, 57 F.4th 779, 787-88 (10th Cir. 2023).
48. *Midland Brake, Inc.*, 180 F.3d at 1154.
49. *Smith,* 180 F.3d at 1175.
50. *Id.*
51. 42 U.S.C. §12112(b)(5)(A).
52. 29 C.F.R. §1630.2(m).
53. 180 F.3d 1154 (10th Cir. 1999).
54. *Id.*

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Not less than 60 days prior to the Annual Meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a signed petition nominating a candidate to the office of member at large on the Board of Governors, or three or more county bars may file appropriate resolutions nominating a candidate for this office.

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

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

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

Elections for contested positions will be held at the House of Delegates meeting on Nov. 7, during the 2025 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2025.

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

OKLAHOMA BAR ASSOCIATION
NOMINATING PETITIONS

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

OFFICERS

President-Elect
John E. Barbush, Durant

Nominating resolutions have been filed by three county bar associations nominating John E. Barbush, Durant, for president-elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2026. The three associations are set forth below:

Bryan County Bar Association, Pontotoc County Bar Association and Tulsa County Bar Association.

President-Elect
Jana L. Knott, El Reno

Nominating petitions have been filed nominating Jana L. Knott, El Reno, for president-elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2026. Fifty of the names thereon are set forth below:

Cathy M. Christensen, Christopher Scott Reser, Paul Edward Streck, Collin Robert Walke, Steven Michael Holden, Kara Rose Didier, John Shelby Shelton, Michael Lee Mullins, Kelli Dian Kelso, Christen Michelle Moroz, Amber Nicole Peckio, Guy W. Tucker Jr., Palmer Christian Johnson, Michael Paul Taubman, Magdalena Anna Way, Joseph Patrick Weaver Jr., Andrew James Morris, Curtis J. Thomas, Michael Alexander Arthur Duncan, Elke Meeus, Kate Naa-Amoah Dodoo, Vickie Jo Buchanan, Brandon Lee Buchanan, Jennifer Briana Puckett, Laura Jo Long, BaiLee Marie Jarvis, Walter Henry Mengden IV, Landen Kendell Logan, Micheal Steven Oglesby, Tommie Craig Gibson, Allyson Anna Marie Stewart, Chance Logan Deaton, Kristy Ellen Loyall, Tommy Wayne Humphries, David Patrick Henry, William Jason Hartwig, Mary Ruth McCann, Luke Cody McClain, Susan Diane Williams, Ali William Khalili, Suzanne J. Parker Heggy, John Albert Alberts, Eric Matthew Epplin, Austin Tyler Murrey, Bethany Martina Ball, John Edward Harper Jr., Tosha Lee Ballard, Abigail Emma Bauer, David Andrew Sturdivant and Robert Wallace Hill.

A total of 66 signatures appear on the petitions.

IN RE: AMENDMENT TO THE RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW

2025 OK 33
Case Number: SCBD-7744
Decided: 05/12/2025
THE SUPREME COURT OF THE STATE OF OKLAHOMA

In Re: Amendment to RULE TWO, RULE SIX and RULE SEVEN of the Rules Governing Admission to the Practice of Law, 5 O.S. 2011, Ch. 1, app. 5.

ORDER

¶1 This matter is before the Court upon an Application for Order Amending RULE TWO, RULE FOUR, RULE SIX, RULE SEVEN, RULE NINE and RULE TEN to the Rules Governing Admission to the Practice of Law, 5 O.S. 2011 Ch. 1 app 5. This Court finds that it has jurisdiction over this matter and RULE TWO, RULE SIX and RULE SEVEN are hereby amended as set out in Exhibit "A" attached hereto.

¶2 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 12th DAY OF MAY 2025.

/s/ CHIEF JUSTICE

CONCUR: ROWE, C.J., KUEHN, V.C.J., and WINCHESTER, EDMONDSON, COMBS, GURICH AND JETT, JJ.

CONCUR IN PART/DISSENT IN PART: KANE, J.

DISSENT: DARBY, J.

EXHIBIT "A"

Rules governing admission
to the practice of law
in the State of Oklahoma

Amended and Promulgated by the Supreme Court of Oklahoma in Revised Form on the 7th day of February 2023.

In effect on May 12, 2025.

RULE TWO
ADMISSION UPON MOTION WITHOUT EXAMINATION

Except as otherwise provided in Rule Two and Six, the following persons, when found by the Board of Bar Examiners to be qualified under Section I and 2 of Rule One, may be admitted by the Supreme Court to the practice of law in the State of Oklahoma upon the recommendation and motion of the Board, without examination:

RULE SIX
ADDITIONAL EXAMINATIONS

~~In the event of the failure of an applicant to pass any examination, such applicant, if otherwise qualified under these Rules, may be permitted to take any number of subsequent examinations upon filing an additional application with the Board of Bar Examiners proving continued good moral character and fitness to practice law. The application shall be filed by May 15 for the July examination and by December 15 for the February examination.~~

Section 1. An applicant who fails to pass any examination, if otherwise qualified under these Rules, may be permitted to take up to four subsequent examinations upon filing an additional application with the Board of Bar Examiners proving continued good moral character, due respect for the law, and fitness to practice law. The application shall be filed by May 15 for the July examination and by December 15 for the February examination.

Section 2. An applicant may request a one-time waiver of the subsequent examination rules. The following guidelines shall apply to such request:

(a) The waiver request shall be verified, in writing, on forms delegated by the Board of Bar Examiners, accompanied by such fees as prescribed by Rule Seven, and shall show good cause for the waiver;

(b) The burden of proof shall be on the applicant; and

(c) The applicant shall otherwise be eligible to take the Oklahoma Bar Examination.

This section shall take effect in July 2025 and is not retroactive.

RULE SEVEN
FEES

The following non-refundable fees shall be paid to the Board of Bar Examiners at the time of the filing of the application:

(a) Registration:
Regular $125
Nunc Pro Tunc $500

(b) By each applicant for admission upon motion: the sum of $2,000.

(c) By each applicant for admission by examination under Rule Four, §1:

FEBRUARY BAR EXAM
Application filed on or before:

1 September $1,250
1 October $1,300
1 November $1,400

JULY BAR EXAM
Application filed on or before:

1 February $1,250
1 March $1,300
1 April $1,400

or applicants for admission by UBE score transfer only who are licensed in another jurisdiction or have not previously registered as a law student: the sum of $1,250

(d) By each applicant for a Special Temporary Permit under Rule Two, §5: there will not be any fee charged to the applicant.

(e) By each applicant for a Temporary Permit under Rule Nine: $150.

(f) By each applicant for admission by examination who have previously registered as a law student:

FEBRUARY BAR EXAM
Application filed on or before:

1 September $650
1 October $700
1 November $800

In effect on June 1, 2021;

JULY BAR EXAM
Application filed on or before:

1 February $650
1 March $700
1 April $800

(g) By each applicant for a waiver under Rule Six, $500.00 fee.

Save the Date

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TU College of Law

Highlights From This Year's Conference

Visit the OBA Facebook page at facebook.com/okbarassociation to see more Solo & Small Firm Conference photo highlights. Thank you to all the speakers, sponsors, vendors and attendees for a great conference this year!

Attendees earned all their 2025 MCLE credits during the conference. This year's sessions included topics related to family law, criminal law, law practice management and much more.

Gigi McCormick presents Gary Jones with a giveaway prize while Julie Bays gives essential tips for law practices during the closing session, which is always a favorite. Congratulations to all the winners of the conference giveaways.

Anastasia Krich-Mahoney, Julie Bays and Kenton Brice present the popular "60 Tips in 60 Minutes" CLE session.

Solo attendees visit the conference vendor tables during their breaks between sessions. Thanks so much to this year's sponsors and vendors!

Attorneys take an early-morning yoga break to reset before Friday's events kick off. Thanks to Hall Estill, the OBA Lawyers Helping Lawyers Assistance Program and the OBA Young Lawyers Division for sponsoring the yoga and juice bar event!

Attendees gather at Exhibit C Gallery for the Opening Reception, sponsored by Oklahoma Attorneys Mutual Insurance Co. During the event, the group enjoyed checking out the exceptional artwork on display while connecting with other attorneys.

Why Attorneys Are Choosing Destination CLEs for Their Continuing Legal Education

WRITTEN BY: **MARY DESPAIN**

Continuing legal education is a professional requirement, but at Destination CLEs, it's also an opportunity to grow, recharge and connect with fellow attorneys in some of the world's most breathtaking settings.

More attorneys are discovering the unmatched value of attending CLE conferences that combine education with adventure. Here's why attending a Destination CLEs conference could be one of the smartest – and most enjoyable – decisions you'll make this year.

CLE Meets Travel: Education Without Compromise

Traditional CLE programs can sometimes feel routine and uninspiring. Destination CLEs changes the game by offering fully accredited CLE sessions in world-class locations, from the historic streets of Edinburgh, Scotland, to the sun-soaked beaches of Mexico.

Imagine earning most or all of your annual MCLE requirements while sipping coffee in a Portuguese café, sailing through the Caribbean or gazing over the cliffs of Dubrovnik, Croatia. With Destination CLEs, your professional development becomes part of an unforgettable journey.

Expert Speakers and Relevant Topics

Destination CLEs are about more than beautiful locations – they're about quality content. Each conference features experienced and dynamic speakers who deliver engaging, relevant and timely legal education. Topics range from legal writing and ethics to high-profile cases, including the Amanda Knox trial, which is the focus of an upcoming Caribbean cruise conference. Past notable speakers have included Paula J. Yost, a passionate advocate for mental wellness in the legal profession; Joel Oster, the Comedian of Law; and other accomplished attorneys and thought leaders who brought fresh perspectives and real-world insights to every session.

Professional and Personal Growth

Attending a Destination CLEs conference isn't just about fulfilling a requirement – it's about growth. You'll return with:

- New legal insights and continuing legal education credit
- An expanded professional network
- Cultural awareness and a global perspective
- Renewed energy and passion for your practice

By stepping outside the office and into a new environment, attorneys often find clarity, inspiration and fresh ideas they can apply immediately to their work.

A Strong Legal Community With a Global Perspective

Attorneys who attend Destination CLEs conferences become part of a supportive and intellectually curious community. These events attract legal professionals from across the U.S., and occasionally abroad, who are looking to network, share ideas and build meaningful connections. Whether you're a solo practitioner, in-house counsel or a partner at a major firm, you'll find peers who are equally committed to professional excellence and personal enrichment.

Plus, many of our conferences foster a "travel tribe" atmosphere, with private Facebook groups and alumni perks that keep the community connected long after the trip ends.

Designed for Work-Life Balance

Burnout is a significant issue in the legal profession, and traditional CLE courses often do little to alleviate stress. Destination CLEs are different. Our conferences are carefully designed to offer a balance of education, networking and free time to explore. Sessions

typically take place in the mornings, leaving afternoons and evenings open for guided tours, local cuisine or simply relaxing with your feet in the sand.

By integrating CLE requirements into an energizing travel experience, attorneys return home not only with new knowledge but also feeling refreshed, recharged and reconnected to their love of the law. Don't forget, spouses are encouraged to join!

Incredible Destinations: Past, Present and Future

Destination CLEs has hosted conferences in a growing list of unforgettable places. Here's a glimpse of some of our past and upcoming destinations:

Past Conferences

Edinburgh, Scotland (2024). Held in one of Europe's most beautiful cities, this conference took a deep dive into international law and judicial systems with historical context.

Reykjavik, Iceland (2024). This conference blended legal education with geothermal spas and the chance to see the Northern Lights.

Dubai, United Arab Emirates (2025). A striking blend of innovation and tradition, this conference offered CLE sessions in a city known for its luxury, architecture and dynamic legal landscape, providing a truly global perspective.

Upcoming Conferences

Athens, Greece (2025). Where the trials of Socrates come alive, this conference explores ancient legal foundations in the cradle of democracy.

Costa Rica (2025). Earn MCLE credits surrounded by lush rainforests, stunning coastlines and vibrant culture. This signature journey blends professional development with an unforgettable tropical adventure.

Thailand (2026). With a focus on international law and legal ethics, this exotic destination promises rich experiences both in and out of the classroom.

Munich, Germany (2026). Explore the legacy of the Nuremberg trials and their impact on international law in the heart of Bavaria.

These conferences often sell out months in advance, especially as many attorneys are now prioritizing experiences over traditional classroom settings.

Stress-Free Planning and Premium Support

Planning international travel can feel overwhelming – unless you're traveling with Destination CLEs. Each trip is carefully curated to offer high-end accommodations, expertly designed tours, reliable transportation and local experiences that make the most of your time abroad. We handle the logistics so you can focus on what matters: learning, connecting and making lifelong memories.

Ready to Join Us?

CLE doesn't have to be boring. It can be transformative. Destination CLEs is redefining what it means to earn your MCLE credits. With every conference, we're building a community of legal professionals who value exploration, learning and meaningful connection.

If you're looking for a CLE experience that inspires, educates and rejuvenates, Destination CLEs is your gateway to learning and adventure.

Explore our upcoming conferences at www.destinationcles.com and secure your spot before they're gone. CLE should be more than a checkbox – it should be a journey.

Destination CLEs

About the Author: Mary DeSpain is the founder of Destination CLEs.

My Midyear Reflection: Advancing the Legal Profession in Oklahoma With Purpose and Focus

By Janet Johnson

AS WE REACH THE MIDpoint of the year, I reflect with pride on the progress we have made in support of our members and the practice of law across the state. This year, our focus has remained clear and consistent: to provide meaningful resources, relevant education, and practical support to help Oklahoma lawyers succeed in their work and better serve their clients.

EXPANDING CONTINUING LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT

One of our most significant accomplishments this year has been the continued growth of our continuing legal education (CLE) offerings. We have delivered a wide range of programs tailored to the evolving needs of legal professionals in Oklahoma. From recent state and federal case law updates to new topics such as legal technology and ethics in digital communications, our CLE courses remain timely, practical, and directly applicable to daily legal practice. We have also expanded access to these offerings through both live and on-demand formats, helping attorneys in all corners of the state efficiently meet their requirements and sharpen their skills.

ACCESS TO JUSTICE AND PRO BONO INITIATIVES

The OBA's ongoing commitment to accessible and affordable justice for all continues to be a cornerstone of our service to the public and our profession, and "access to justice" has been a primary focus for 2025 OBA President Ken Williams. In May, the OBA hosted its annual Ask A Lawyer community service event in conjunction with Law Day. The high number of calls and emails we received this year emphasizes the need for the expansion of these types of services. Additionally, a YLD-sponsored Wills for Heroes event is scheduled for Aug. 16 in Durant, which will assist military service veterans and first responders with their estate planning needs. Community-facing efforts like these have helped address legal needs in areas such as family law, landlord/tenant disputes, veterans' issues, and expungements.

Collaborations with nonprofit community partners – such as the Access to Justice Foundation, Oklahoma Indian Legal Services, Legal Aid Services of Oklahoma, and the Oklahoma Bar Foundation – are critical to further enhancing the quality of legal services available to the public. For all of those who volunteer to provide pro bono legal services in some capacity, thank you for contributing your time and expertise. It speaks proudly of your commitment to the profession's deep sense of duty and service.

PRACTICE SECTION GROWTH AND MEMBER ENGAGEMENT

Engagement across our practice sections has increased steadily, creating new opportunities for collaboration, resource sharing, and peer connection. Most sections have continued to offer CLE programming tailored to their specific area of law, ranging from criminal and civil litigation to estate planning, real property, and beyond. Our MyOKBar

Communities website and section meetings have become valuable spaces for members to stay informed, ask practical questions, and build professional networks.

Additionally, our in-person events have returned with strength and enthusiasm. This year, the Solo & Small Firm Conference returned in its original format, and our members embraced the chance to reconnect, exchange ideas, and celebrate achievements within the legal community. These events remain essential to building the relationships that support long-term professional growth and collegiality.

As a heads up, the OBA Annual Meeting will be returning to the fall: Mark your calendars for Nov. 6-7 in Oklahoma City at the Sheraton Downtown Hotel. It will be strictly bar business this year, and we are hopeful the format change will be another success for the OBA.

SUPPORTING THE PRACTICE OF LAW ACROSS THE STATE

Whether you're a solo practitioner in rural Oklahoma or part of a larger firm in Tulsa or Oklahoma City, our goal is to help you practice more effectively and with greater confidence.

We understand the needs of our members are diverse and often shaped by geography, firm size, and practice type. That's why we continue to focus on practical resources that support the day-to-day demands of Oklahoma lawyers. OBA Practice Management Advisor Julie Bays is standing by to assist with law office technology and management concerns, and Ethics Counsel Richard Stevens is always available to discuss your ethics and professional responsibility questions. And remember, these services are available at no cost to every Oklahoma lawyer as an OBA member benefit.

LOOKING AHEAD: STAYING FOCUSED AND MISSION-DRIVEN

As we enter the second half of the year, our mission remains clear: to serve the profession by supporting attorneys in their practice and upholding the principles of justice, professionalism, and public services. The programs, services, and initiatives we offer are evaluated with one central question in mind: Will this enhance the quality of services our members can provide to their clients? This clarity of purpose allows us to stay grounded while continuing to innovate and respond to changes in the legal landscape.

We thank you, our members, for your continued involvement, feedback, and dedication. We look forward to the work ahead and to continuing our shared commitment to excellence in the legal profession across Oklahoma.

Janet

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

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF BRANDY KEARNEY CHAMBERS, SCBD # 7913 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **AUGUST 28, 2025.** Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF JERRY D. MAGILL, SCBD # 7923 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **SEPTEMBER 17, 2025.** Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

From the President

(continued from page 4)

go beyond what is required and give back to the profession and your community. I know there are times you feel overcommitted and underappreciated (and maybe like you are in the "middle of nowhere"), but please do not grow weary of doing good! "Find yourself" through your service to others. Although you may not ever know the full impact of your efforts, everything you do contributes to the collective effort of our association to improve the profession and our communities.

A personal experience is an example of how what we do affects others. After a completely unexpected eight-day hospital stay (which felt like "the middle of nowhere" to me), Fred Slicker, an OBA member who has since died, sent me a signed copy of his book, *This I Believe*. The book is both a synopsis and a statement of beliefs resulting from his intense study of the Bible, as well as a bit of an autobiography. It also contains references to the inspiration and renewal Mr. Slicker found from his fishing experiences in the White River in Arkansas: "The river is a symbol of the circle of life itself. Sometimes, the river roars down a steep mountain gorge with the fury of a spring thunderstorm, destroying everything in its path. At other times, the river meanders gently through the deep holes where the big browns feed. But always and forever, the river is in constant motion, continuing to create and sustain all forms of life. The river is a symbol of hope, restoration, regeneration, recreation and renewal." I was touched and encouraged by Mr. Slicker's gift and wanted to share it with you.

What was uncanny was that I had just resurrected and reread *The Re-Creation of Brian Kent*, one of the less well-known writings of Harold Bell Wright, author of *The Shepherd of the Hills*, *The Eyes of the World* and *When a Man's a Man*. Mr. Wright wove his story around a river in Missouri, where a retired teacher continued to live a life of teaching through her example of grace and mercy. The story, beautifully told, is of a young banker whose poor choices led to criminal conduct, which caused him to try to take his own life by drowning himself in the river. Instead, he is found and cared for by the teacher and another one of her students. The story of the young banker's "recreation" of himself as an author is an inspiring story of learning from mistakes, doing what can be done to correct them and growing from the experience. Throughout the story, Mr. Wright uses the river as a symbol of life:

> I would teach them the things you have taught me. I would say to everyone that I could persuade to listen: "It doesn't in the least matter what your experience is, the old river is still going on to the sea. No matter if every woman you ever knew has proved untrue, virtuous womanhood still IS. No matter if every man you ever knew has proved false, true manhood still IS. If every friend you ever had has betrayed your friendship, loyal friendship still IS. If you have found nothing in your experience but dishonesty and falsehood and infidelity and hypocrisy, it is only because you have been unfortunate in your experience; because honesty and fidelity and sincerity are existing FACTS. They are the very foundational facts of life, and can no more fail life than the river can fail to reach the sea."

I hope Mr. Wright's words from the early 1900s will resonate with you as they do with me and be helpful to you as you reflect on your "middle of nowhere." In closing, I want you to know that I believe in the value of our profession and service, and I believe in you. As always, thank you for your service!

Outdated and at Risk: Why Lawyers Must Move Beyond Windows 10 Now

By Julie Bays

THE COUNTDOWN IS ON for legal professionals relying on outdated technology. Law firms have just over two months left before Microsoft officially ends support for Windows 10 on Oct. 14. That date marks the end of security updates and patches for one of the most widely used operating systems in the legal profession. If your office is still running Windows 10, especially on older machines that can't be upgraded to Windows 11, then now is the time to act. Continuing to use unsupported systems after the deadline poses serious risks to client confidentiality, cybersecurity compliance and ethical obligations.

WHAT 'END OF SUPPORT' REALLY MEANS

On Oct. 14, Microsoft will cease to provide all forms of support for Windows 10, including critical security updates, regular patches and even technical assistance.[1] While your computer may appear to run as usual after this date, beneath the surface, it will be increasingly vulnerable to cyber threats. Any new security flaws discovered by hackers will go unaddressed, leaving your system – and, by extension, your clients' sensitive data – at significant risk.

The consequences are not hypothetical. When Windows 7 and XP reached their end-of-support dates, cybercriminals wasted no time exploiting well-known vulnerabilities that were left unpatched.[2] For example, the infamous WannaCry ransomware attack in 2017 spread rapidly through organizations that had failed to update from unsupported systems, causing widespread disruption and financial losses in both the private and public sectors.[3]

Law firms are prime targets for hackers due to the confidential, high-value information they manage. Outdated infrastructure opens the door to a range of attacks; malware infections, ransomware, data breaches and unauthorized access can all occur more easily when an operating system is no longer being actively secured. Even with antivirus software and firewalls in place, unsupported systems become the weakest link in your cybersecurity chain.

The end of support for Windows 10 represents a hard stop, not a gentle fade-out. Continuing to use these systems after Oct. 14 is not just a technical or operational decision; this matter directly impacts your firm's ability to safeguard client data, comply with professional standards and avoid costly security incidents.

THE ETHICAL AND COMPLIANCE RISKS

Beyond the technical concerns, the continued use of unsupported software raises ethical red flags. Rule 1.1 of the Oklahoma Rules of Professional Conduct requires lawyers to maintain competence, which includes understanding the "benefits and risks associated with relevant technology."[4]

The duty of confidentiality under Rule 1.6 also compels attorneys to take reasonable steps to protect client information.[5] If a law firm gets hit with a data breach because they were relying on outdated tech, they could face disciplinary action, lose their clients' trust and even get sued for not preventing a foreseeable risk.

THE WINDOWS 11 HARDWARE ROADBLOCK

Unfortunately, upgrading isn't always as simple as clicking "update." Windows 11 has strict hardware requirements, including support for TPM 2.0 (trusted platform module) and newer generation processors.[6] Many older computers don't meet these

requirements. If your computers are more than five years old, chances are some of them can't run Windows 11.

According to one industry estimate, nearly 240 million PCs globally cannot be upgraded due to these hardware limitations.[7] That likely includes a large number of law office desktops and laptops purchased before 2021.

WHAT TO DO NEXT

If you haven't already started planning, now is the time. Follow these steps to get ahead of the deadline:

1) Check compatibility. Visit Microsoft's comprehensive system requirements page to determine if your computers are compatible with the upgrade.[8]
2) Inventory your hardware. Identify which computers must be replaced and which can be upgraded.
3) Review software compatibility. Make sure your essential legal software – practice management tools, billing systems, document automation and court e-filing program – are fully compatible with Windows 11.
4) Secure and back up data. Before replacing or upgrading any machines, ensure client files, firm records and software keys are securely backed up and accessible.
5) Budget accordingly. Begin allocating funds for hardware replacements.
6) Upgrade in phases. Avoid firmwide disruption by planning upgrades in waves or by department.
7) Engage IT help. Work with a technology consultant or managed services provider.
8) Revisit cybersecurity settings. Use this transition to assess endpoint protection, implement multifactor authentication (MFA) and take advantage of newer security features in Windows 11.
9) Educate staff. Brief your team on what to expect to ease the transition.
10) Dispose of old equipment securely. Before recycling or donating old devices, ensure all data is properly wiped using tools or services that meet ethical and regulatory standards.

A NOTE ABOUT EXTENDED SECURITY UPDATES

Microsoft will offer paid extended security updates (ESUs) for Windows 10 users who can't complete their transition by the deadline. These are designed as a stopgap and are not a permanent solution, and they cost extra.[9] ESUs may buy your firm one more year of security patches, but they are not a license to delay indefinitely.

ESUs provide organizations with critical security updates for Windows 10 after official support has ended, helping to protect against newly discovered vulnerabilities that could be exploited by cybercriminals. However, ESUs do not include new features, nonsecurity updates or technical support from Microsoft. They serve as temporary safeguards for systems that must continue running Windows 10 a little longer, giving businesses added time to complete their migration to Windows 11 while minimizing security risks during the transition period.

DON'T WAIT UNTIL IT'S TOO LATE

The move away from Windows 10 is not optional. After Oct. 14, unsupported systems in your firm will become a liability, technically, ethically and possibly legally. Take this opportunity to modernize your infrastructure, avoid last-minute disruptions and protect your clients' confidential data.

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

ENDNOTES

1. Microsoft Support, "Windows 10 support ends on October 14, 2025," http://bit.ly/3GMCDbz.
2. New York State Bar Association, "Why Lawyers Should Take Windows 7 End-of-Support Seriously," (2019), https://bit.ly/46GJyO5.
3. Cloudflare, "What was the WannaCry ransomware attack?" https://bit.ly/4nMNFhN.
4. Oklahoma Rules of Professional Conduct, Rule 1.1 cmt. 6, https://bit.ly/46FtA6M.
5. Oklahoma Rules of Professional Conduct, Rule 1.6, https://bit.ly/44HCIVV.
6. Microsoft Support, "Minimum system requirements for Windows 11," https://bit.ly/4lscheb.
7. *Lawyer Monthly*, "Microsoft's Emergency Alert: 240M Windows Users Should Stop Using Their PCs," (April 2025), https://bit.ly/469QoeW.
8. Microsoft Support, "Find Windows 11 specs, features, and computer requirements," https://bit.ly/4lQRSz7.
9. Microsoft Learn, "Extended Security Updates for Windows 10," https://bit.ly/4lL5bBP.

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SMOKEBALL BILL TRUST ACCOUNTING

Trust and billing software that helps manage trust accounting compliantly, bill easily and get paid faster

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ETHICS COUNSEL

Confidential assistance with ethical questions and inquiries

$250/HR

MANAGEMENT ASSISTANCE PROGRAM

Business and management help through organization and operation assistance

$150/HR

LAWYERS HELPING LAWYERS

Monthly discussion groups and up to six hours of counseling

$150/HR

LEXOLOGY

Personalized daily newsfeed of legal updates with research tools

$500/YR

OBA PUBLICATIONS

Oklahoma Bar Journal magazine features practice area articles and weekly news digest *Courts & More* highlights appellate court info and legal news

$175/YR

PLUS...

NETWORKING OPPORTUNITIES

Leadership and volunteering – Opportunities to serve in committees, sections and boards.

Events – Network and attend CLE programs at the Annual Meeting and Solo & Small Firm Conference.

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

PROFESSIONALISM SERVICES

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

Speakers for County Bar Associations – Invite OBA officers, Board of Governors members and staff to speak at luncheons and banquets on a variety of topics including legislative issues, ethics, law office management and law practice tips.

MEMBERSHIP DISCOUNTS

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

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

Meeting Summaries

The Oklahoma Bar Association Board of Governors met April 18.

REPORT OF THE PRESIDENT

President Williams reported he attended OBA Day at the Capitol, and he attended and made remarks during the ceremony for Law Day contest winners in April. He also recorded two video messages to be shared on Law Day and attended the joint reception for the Board of Governors with the Tulsa County Bar Association. He completed his May President's Message for the *Oklahoma Bar Journal*, continued working on presidential appointments and virtually attended the Professionalism Committee meeting. He also attended the Justice Dana Kuehn Inaugural Symposium on Justice and Law at TU, participated in the Tulsa County Bar Foundation Charity Golf Tournament and presented an environmental update for the Oklahoma Municipal League and Oklahoma Municipal Utility Providers Water & Environmental Summit.

REPORT OF THE PRESIDENT-ELECT

President-Elect Peckio reported she attended OBA Day at the Capitol, the Justice Dana Kuehn Inaugural Symposium on Justice and Law at TU and the joint reception for the Board of Governors with the Tulsa County Bar Association.

REPORT OF THE VICE PRESIDENT

Vice President White reported he presented the professionalism moment to the Tulsa County Bar Association. He also attended the monthly meeting of the Tulsa City-County Library Commission and the joint reception for the Board of Governors with the Tulsa County Bar Association.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended OBA Day at the Capitol, worked on Judicial Nominating Commission election procedures and met with Mock Trial Coordinator Judy Spencer. She worked on Law Day content and discussed the timeline for filing strikes/suspends for MCLE and dues noncompliance. She met with Military Assistance Committee members S. Shea Bracken and John Cannon to discuss upcoming events, with OAMIC to discuss the Solo & Small Firm Conference and with a potential association management software vendor. She attended the Law Day Contest Ceremony, a Solo and Small Firm Conference Planning Committee meeting and a meeting to discuss SEO processes for the new OBA website design. She attended a Garfield County Bar Association meeting, the April YLD meeting and met with the Access to Justice Foundation to discuss options for website resources. She also attended the joint reception for the Board of Governors with the Tulsa County Bar Association.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Pringle reported he attended OBA Day at the Capitol and the joint reception for the Board of Governors with the Tulsa County Bar Association.

BOARD MEMBER REPORTS

Governor Barbush reported he attended OBA Day at the Capitol and met with his local legislators, presented a CLE on legal malpractice to the Muskogee County Bar Association and coordinated speaking engagements for Law Day at Durant High School. He also worked with the Bryan County Bar Association to recognize milestone membership anniversaries and attended the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Barker** reported he attended the Garfield County Bar Association meeting and participated in its Law Day event, "State of Oklahoma v. The Big Bad Wolf." He attended OBA Day at the Capitol and the joint reception for the Board of Governors with the Tulsa County Bar Association. He reviewed the association's list of licensed attorneys in District 4 counties and notified the OBA of deceased members appearing on the list. He also compiled a revised list of attorneys available for hire to the general

public in District 4 counties. He spoke with judges and presidents of county bar associations for rural counties concerning "legal desert" issues, and he received an OBA Award nomination. **Governor Cooper** reported he attended multiple Oklahoma County Bar Association board meetings and Executive Committee meetings. He also attended the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Dodoo** reported she attended Law Day and the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Hixon** reported he attended OBA Day at the Capitol, the Tulsa County Bar Association special board meeting and the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Knott** reported she attended the Canadian County Bar Association March meeting and worked with the association to recognize milestone membership anniversaries. She also attended the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Locke** reported he attended the Muskogee County Bar Association monthly meeting. He also attended the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Oldfield** reported he attended the Legal Internship Committee meeting and the joint reception for the Board of Governors with the Tulsa County Bar Association. Governor Rogers reported he attended the TU College of Law Alumni Association board meeting and the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Thurman** reported he attended a District Attorneys Council meeting and plans to attend the April 22 Bench and Bar Committee meeting. He also attended the joint reception for the Board of Governors with the Tulsa County Bar Association. **Governor Trevillion** reported by email he attended the Oklahoma County Bar Association Board of Directors meeting. **Governor West** reported he attended OBA Day at the Capitol, the Technology Committee meeting and the joint reception for the Board of Governors with the Tulsa County Bar Association. He also attended the Cleveland County Bar Association monthly meeting. He made a presentation and participated in a courthouse tour for classical studies middle school students with Judge Michael Tupper, and he judged the National Christian Forensics and Communications Association Speech & Debate Competition.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Venus reported he attended OBA Day at the Capitol and several YLD meetings and met with the Board of Bar Examiners about the upcoming swearing-in ceremony for new admittees. He also attended the joint reception for the Board of Governors with the Tulsa County Bar Association.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Vice President White reported the **Professionalism Committee** met recently and is planning CLE. Past President Pringle said the **Solo and Small Firm Conference Planning Committee** is meeting regularly, and program planning is underway. Governor Cooper reported the **Bar Center Facilities Committee** is meeting regularly to discuss planned updates and improvements to the building. He added that the **Military Assistance Committee** is also meeting regularly and is planning pro bono activities. Governor Barker said the **Awards Committee** is now accepting nominations for the 2025 OBA Awards. Governor Hixon said the **Law Day Committee** met recently and discussed the annual Ask A Lawyer event coming up on May 1. They also hosted the art and writing contest winners at a ceremony in early April at the state Capitol, where Chief Justice Rowe made remarks. Governor

Thurman reported the **Bench and Bar Committee** has its next meeting scheduled. Governor Knott reported the **Legislative Monitoring Committee** held its annual OBA Day at the Capitol event in March, and it was well attended. Governor Dodoo said the **Law Schools Committee** has completed its annual tours of the state's three law schools, and the committee's report is expected soon.

PRESIDENT WILLIAMS' APPOINTMENTS

The board approved a motion to approve the following appointments:

- **Clients' Security Fund Committee** – President Williams appoints Jennifer M. Castillo, Oklahoma City, as a member with a term beginning April 18, 2025, and expiring Dec. 31, 2027. Governor Barbush moved and President-Elect Peckio seconded to approve the appointment. Motion passed.
- **Professional Responsibility Tribunal (PRT)** – President Williams appoints retired Judge Daniel Lee Crawford, Sand Springs, as a member with a term beginning July 1, 2025, and expiring June 30, 2028. Governor Venus moved and Governor Rogers seconded to approve the appointment. Motion passed.

President Williams also made the following appointments that did not require board approval:

- **Audit Committee** – President Williams appoints Philip D. Hixon, Tulsa, as chairperson with a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Civil Procedure and Evidence Code** – President Williams reappoints Spencer Tracy Habluetzel, Wheatland, as chairperson with a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Bench and Bar Committee** – President Williams reappoints Judge Richard Ogden, Oklahoma City, and Leah Rudnicki, Oklahoma City, as co-chairpersons with terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025. He appoints Judge Thad Balkman, Norman, and Patrick Lane, Oklahoma City, as co-vice chairpersons with terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Rules of Professional Conduct** – President Williams reappoints Judge Thad Balkman, Norman, as chairperson with a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.

COMMISSION TO ACT ON GRIEVANCE PER RULE 3.3 (B)(2) OF THE RULES GOVERNING DISCIPLINARY PROCEEDINGS

The board approved a motion to approve President Williams' appointment of a special three-member commission to act on a grievance filed against a member of the Professional Responsibility Commission. The three appointees are Kimberly Hays, Tulsa; James T. Stuart, Shawnee; and M. Joe Crosthwait Jr., Midwest City.

PROPOSED LEGAL DESERT OUTREACH

Discussion took place regarding specific actions board members have taken to address ongoing issues in their local impacted areas. President Williams asked the board to continue providing written reports of actions to him for further follow-up, outreach and membership communications.

EXECUTIVE DIRECTOR APPOINTMENT

Executive Director Johnson appoints Kristie D. Scivally, Oklahoma City, to the State Council for Interstate Juvenile Supervision with a term beginning July 1, 2025, and expiring June 30, 2028.

UPCOMING OBA AND COUNTY BAR EVENTS – 2025

President Williams reviewed upcoming bar-related events and activities involving the Board of Governors, including the New Attorney Admission Ceremony scheduled for April 29 at St. Luke's Methodist Church in Oklahoma City, the statewide celebration of Law Day on May 1 and the Sheep Creek event in Pontotoc County on June 4.

The Oklahoma Bar Association Board of Governors met May 16.

REPORT OF THE PRESIDENT

President Williams reported he attended the April meeting of the Bench and Bar Committee, began drafting his next President's Message for the *Oklahoma Bar Journal* and continued to work on appointments. He worked on legal desert letters to mayors of 15 county seats and attended the Court of Criminal Appeals celebration, where he presented a congratulatory message to Judge Gary Lumpkin for over 50 years of service as an Oklahoma lawyer. He attended the new lawyer swearing-in ceremony and presented a congratulatory message to the new admittees. He provided Law Day theme materials for the speaker at the Cleveland County Bar Association Law Day Luncheon

and attended and presented a CLE program at the Seminole County Bar Association Law Day. He attended the Oklahoma County Bar Association and Tulsa County Bar Association Law Day luncheons and the Oklahoma Chief Justice Colloquium on Civility and Ethics, as well as virtually attended the Investment Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Peckio reported she continued work on Budget Committee appointments and volunteered for a two-hour phone shift during the Ask A Lawyer event on Law Day. She attended the Tulsa County Bar Association Law Day Luncheon, the Family Law Section happy hour in Tulsa and the Cannabis Law Committee monthly meeting. She discussed issues impacting the legal profession with current OBA members and several past OBA presidents to gain an understanding of how the OBA can better help its members.

President-Elect Peckio discussed issues impacting the legal profession with current OBA members and several past OBA presidents to gain an understanding of how the OBA can better help its members.

REPORT OF THE VICE PRESIDENT

Vice President White reported he attended the Tulsa County Bar Association Law Day Luncheon and the Professionalism Committee meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she met with staff on long-range planning items, prepared presentations for Law Day events and attended the Bench and Bar Committee meeting and the Court of Criminal Appeals ceremony honoring Judge Lumpkin's more than 50 years of service to the OBA. She attended the swearing-in ceremony for new admittees, as well as Law Day events for the Seminole, Oklahoma and Tulsa county bar associations. She attended the Oklahoma Chief Justice Colloquium on Civility and Ethics and the Investment Committee meeting, had lunch with the OBA's legislative liaison to discuss pending JNC bills and reviewed a proposal for new association management software from Wicket. She reviewed numerous pleadings related to national First Amendment litigation and met with a young lawyer who will be presenting at the Solo & Small Firm Conference. She attended the Membership Engagement Committee meeting, a meeting on updates related to the "Law for People" portion of the OBA website, and she met with the executive director of Oklahoma Lawyers for Families and Children.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Immediate Past President Pringle reported he volunteered at the Ask A Lawyer event on Law Day and chaired a meeting of the Investment Committee.

BOARD MEMBER REPORTS

Governor Barbush reported he attended the Bryan County Bar Association meeting and spoke at the Durant Rotary Club on the legal profession, being in a legal desert and the role of the Judicial Nominating Commission. He spoke to all senior government classes at Durant High School on Law Day about the history of Law Day, the Young Adult Guide and how to use the OSCN website. He attended the Tri-County Bar Association banquet and presented members Don Shaw and Jim Brannum with their 50-year milestone member certificates and pins on behalf of the OBA. He also assisted in the recruitment of an attorney/former judge for the upcoming vacancy on the JNC. **Governor Barker** reported he attended the Garfield County Bar Association lunch and hosted the Garfield County Bar Association Ask A Lawyer event. **Governor Cooper** reported he attended numerous Oklahoma County Bar Association Board of Directors and Executive Committee meetings and worked with the Bar Center Facilities Committee on moving the construction project forward. **Governor Dodoo** reported she attended the Oklahoma County Bar Association Law Day Luncheon, the Appellate Practice Section meeting with Chief

Justice Dustin Rowe speaking and meetings for the Bench and Bar Committee and the Immigration Law Section. **Governor Hixon** reported by email he attended the Tulsa County Bar Association and Bar Foundation Law Day Luncheon and the Tulsa County Bar Association Board of Directors meeting. **Governor Knott** reported she attended the Tulsa County Law Day Luncheon and the monthly meeting for the Canadian County Bar Association. She also reported that she has submitted nominating petitions for the 2026 president-elect vacancy. **Governor Locke** reported he attended the Membership Engagement Committee meeting and the Muskogee County Bar Association Spring Banquet. **Governor Rogers** reported he attended the Tulsa County Bar Association and Tulsa County Bar Foundation Law Day Luncheon. He also assisted the Bar Facilities Committee with an architect agreement. **Governor Thurman** reported he attended the Bench and Bar Committee meeting. **Governor Trevillion** reported he attended the Oklahoma County Bar Association Board of Directors meeting and the Access to Justice Committee meeting. **Governor West** reported he attended the Cleveland County Bar Association Executive Board meeting and monthly meeting and volunteered at the Trail to Recovery 5k, supporting recovery/treatment courts in Cleveland County. He attended the Technology Committee meeting and the new lawyer swearing-in ceremony.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Venus reported he attended a YLD Wills for Heroes planning meeting and a YLD new attorney meeting. He also attended the social event for new admittees, which was held May 30 at Topgolf in Oklahoma City. He reported the Wills for Heroes event is being scheduled for August in Durant.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

President-Elect Peckio reported the **Investment Committee** met recently and is reviewing association investment policies. Vice President White reported the **Professionalism Committee** met and is working on developing a panel for a presentation during the Solo & Small Firm Conference. Past President Pringle said the **Solo and Small Firm Conference Planning Committee** continues to develop programming for this year's conference, and event planning is coming along well. Governor Venus added the YLD is partnering with LHL to offer morning yoga to conference attendees. Governor Barbush reported the **Cannabis Law Committee** is meeting regularly. He also said the **Lawyers Helping Lawyers Assistance Program Committee** is meeting regularly and continues to host discussion groups for members. Funding for the LHL Foundation is still being determined. Governor Cooper said the **Bar Center Facilities Committee** continues its work on contracts related to architecture and construction. Governor Barker said the **Awards Committee** is accepting nominations for the 2025 OBA Awards. Governor Locke reported the **Membership Engagement Committee** met recently and is continuing to update public information brochures, reaching out to state law schools and staying abreast of membership-facing technology updates. Governor Thurman reported the **Bench and Bar Committee** met recently. Governor Rogers said the **Clients' Security Fund Committee** is planning to meet in July. Governor

Executive Director Johnson reviewed a recent statistical analysis of the OBA membership, which now totals more than 19,000 members.

Trevillion reported the **Access to Justice Committee** is discussing how AI solutions might assist in delivering legal services to the public. Governor Dodoo said the **Bench and Bar Committee** is reviewing jury instructions.

STRIKES AND SUSPENSIONS FOR FAILURE TO PAY DUES AND/OR COMPLY WITH MCLE REQUIREMENTS

Executive Director Johnson explained the process of suspension and strike orders, advising that notice to show cause is mailed, followed by diligent efforts to contact each person on the list before the application is filed with the court.

PRESIDENT WILLIAMS' 2025 APPOINTMENTS

The board passed motions to approve the following appointments:

- **Professional Responsibility Tribunal (PRT)** – President Williams reappoints Sarah Christine Green, Oklahoma City; Richard D. White Jr., Tulsa; Malinda S. Matlock, Oklahoma City; and Kendall Anne Sykes, Oklahoma City, as members with terms beginning June 1, 2025, and expiring June 30, 2028.
- **Clients' Security Fund Layperson** – President Williams reappoints Austin Siegenthaler, Grand Bank, Tulsa, as layperson with a term expiring Dec. 31, 2027.
- **Clients' Security Fund Committee** – President Williams reappoints Sawmon Yousefzadeh Davani, Norman; Leslie Karin Brier, Tulsa; and Dietmar K. Caudle, Lawton, as members with terms expiring Dec. 31, 2027.

MEMBERSHIP STATISTICS FOR CALENDAR YEAR 2024

Executive Director Johnson reviewed a recent statistical analysis of the OBA membership, which now totals more than 19,000 members. The document breaks down membership by categories – such as active classification, age, gender, geographical area and years of practice – to help the association best assess the needs of Oklahoma lawyers.

UPCOMING OBA AND COUNTY BAR EVENTS – 2025

President Williams reviewed upcoming bar-related events and activities involving the Board of Governors, including the Sheep Creek Event at the Oak Hills Golf and Country Club in Ada on June 4, the Solo & Small Firm Conference at the OKANA Resort in Oklahoma City on July 16-18 and the Tulsa County Bar Association and Bar Foundation Annual Meeting in Tulsa on Aug. 21.

The Oklahoma Bar Association Board of Governors met June 27.

REPORT OF THE PRESIDENT

President Williams reported he continued work on presidential appointments and nominations and attended the Pittsburg County Bar Association reception, Law Day celebration, awards meeting and dinner and the LeFlore County Bar Association reception, Law Day celebration and awards luncheon. He virtually attended the OBA Technology Committee and Member Engagement Committee joint meeting regarding a potential upgrade of the OBA's website and attended the retirement party for OBA Management Assistance Program Director Jim Calloway. He coordinated a presentation of the "State of the OBA" speech for the Oklahoma Judicial Conference. He worked on the agenda for the Annual Meeting and plans for speakers, confirmed the reservation for the Board of Governors pre-meeting before its December meeting and virtually attended the Membership Engagement Committee meeting. He attended the swearing-in ceremony for Justice Travis Jett and the Board of Governors pre-meeting event and chaired the Board of Governors Executive Committee meeting. He sent letters to the 15 counties in the state with the lowest attorney population regarding collaboration to encourage attorneys to relocate there to alleviate "legal deserts." He reported he has heard back from officials in Harper County, who are interested in opening a dialogue.

REPORT OF THE PRESIDENT-ELECT

President-Elect Peckio reported she worked on president-elect appointments and a vice president nomination. She attended the Pittsburg County Bar Association reception, Law Day celebration, awards meeting and dinner and the LeFlore County Bar Association reception, Law Day celebration and awards reception. She attended the swearing-in ceremony for Justice Travis Jett, the Board of Governors dinner and the Executive Committee meeting.

REPORT OF THE VICE PRESIDENT

Vice President White reported he attended the monthly Tulsa County Bar Association meeting and presented the professionalism moment. He attended the swearing-in ceremony for Justice Travis Jett and the Professional Responsibility Tribunal Annual Meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the Pittsburg County Bar Association reception and Law Day presentation, audiovisual upgrade planning meetings for Emerson Hall, the Young Lawyers Division's new admittee celebration at Topgolf and a YLD meeting. She filed strikes and suspensions for dues and MCLE, ordered items for this year's bar exam survival kits and reviewed and edited the draft membership needs assessment as part of the association's strategic plan implementation. She finalized Judicial Nominating Commission election ballots for distribution and tallied the District 3 and District 4 election ballots to finalize the elections. She also worked on Solo & Small Firm Conference logistics and Annual Meeting preparations, met with the OBA's auditors and attended a Law for People meeting with the Access to Justice Foundation and the Oklahoma Bar Foundation and a Bar Center Facilities Committee meeting.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Pringle reported he participated in a demonstration for the OBA's website in a joint meeting of the Member Engagement Committee and the Technology Committee. He reviewed litigation bills from outside counsel and attended the swearing-in ceremony for Justice Travis Jett.

BOARD MEMBER REPORTS

Governor Barbush reported he attended the Durant Chamber of Commerce legislative debrief luncheon with local representatives. He joined the Rules of Professional Conduct Committee meeting at the request of the chairperson and reviewed the materials circulated on the proposal for the rule change prior to the meeting. He also attended the LeFlore County Bar Association awards luncheon, the Pittsburg County Bar Association Law Day dinner, the Oklahoma County Bar Association awards luncheon, a Lawyers Helping Lawyers meeting and the Cannabis Law Committee meeting, where he spoke with the chairperson about the committee's desire to transition from a committee to a section. He participated in the OCU Wrestling Fundraising Scramble and attended the swearing-in ceremony for Justice Travis Jett and the Oklahoma County Bar Association's retirement party for Debbie Gordon. **Governor Barker** reported that planning is underway for the Boiling Springs Legal Institute in September. **Governor Cooper** reported he attended the Oklahoma County Bar Association Board of Directors and Executive Committee meetings. **Governor Dodoo** reported she attended meetings for the Rules of Professional Conduct Committee and the Bench and Bar Committee. She also attended the Board of Governors pre-meeting event. **Governor Hixon** reported he attended the Rules of Professional Conduct Committee meeting and the Tulsa County Bar Association Board of Directors meeting. He spoke with John Williamson of Smith Carney regarding the OBA audit and with the Law Day Committee chair regarding pending Ask A Lawyer email inquiries. **Governor Knott** reported she attended the Canadian County Bar Association monthly meeting and presented a CLE to the Appellate Practice Section. **Governor Locke** reported he attended the Lawyers Helping Lawyers Assistance Program Committee meeting and the Membership Engagement Committee meeting, along with the Muskogee County Bar Association monthly meeting. **Governor Oldfield** reported he participated in discussions with the Rules of Professional Conduct Committee related to a proposed rule change. **Governor Thurman** reported he attended the Bench and Bar Committee's Professional Ethics Subcommittee meeting and the Pontotoc County Bar Association officers meeting and reception for Cindy Byrd. **Governor Trevillion** reported he attended the Oklahoma County Bar Association Board of Directors meeting. **Governor West** reported he attended meetings for the Cleveland County Bar Association Executive Board and the Rules of Professional Conduct Committee. He attended The Virtue Center breakfast with the Board of Directors and the swearing-in ceremony for Justice Travis Jett. He also co-presented at Restore Behavioral Health about how mental health professionals should respond to subpoenas.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Venus reported the YLD is planning its Wills for Heroes public service event for Aug. 16 in Durant.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

President-Elect Peckio reported the **Investment Committee** is meeting quarterly. Vice President White said the **Professionalism**

Governor Oldfield reported the Rules of Professional Conduct Committee met recently and is considering a proposal from the Oklahoma Department of Securities to amend Rule 8.4 pertaining to lawyers performing undercover criminal investigations. He said the proposal would ultimately need Supreme Court approval, and it is currently tabled while additional input and an ethics opinion are sought.

Committee is meeting regularly and is planning CLE programming. Governor Oldfield reported the **Rules of Professional Conduct Committee** met recently and is considering a proposal from the Oklahoma Department of Securities to amend Rule 8.4 pertaining to lawyers performing undercover criminal investigations. He said the proposal would ultimately need Supreme Court approval, and it is currently tabled while additional input and an ethics opinion are sought. Governor Barbush reported the **Cannabis Law Committee** continues its discussion of whether to transition into an OBA section; however, at this time, it does not have the 75 members needed for that action to take place. He also said the **Lawyers Helping Lawyers Assistance Program Committee** reports it has received 117 calls to the LHL hotline this year, only four of which were considered crisis calls. The committee believes this may be the result of proactive outreach channeling members to mental health resources before crises develop. He also said the LHL Foundation is applying for funding grants and conducting interviews to fill its new executive director role with the goal of hiring the successful candidate by the end of July. Governor Cooper reported the **Bar Center Facilities Committee** continues to meet and discuss pending contracts to begin work on necessary repairs to the Oklahoma Bar Center. Governor Barker said the **Awards Committee** will soon begin its task of reviewing the 2025 OBA Awards nominations; the deadline for submission is June 30. Governor Hixon said the **Law Day Committee** is currently working to respond to a backlog of emails received during the Ask A Lawyer event on May 1. Governor Locke reported the **Membership Engagement Committee** recently met and continues working on various projects aimed at enhancing communication with OBA members and updating public information resources, including the online public information brochures. Governor Trevillion said the **Access to Justice Committee** is also discussing updating public information resources. Governor Dodoo reported the **Bench and Bar Committee** is meeting regularly and discussing judicial salaries as well as updating the Oklahoma Uniform Jury Instructions (OUJI). Governor Venus said the **Solo and Small Firm Conference Planning Committee** continues to meet and is working with staff to gear up for this year's conference in July.

PRESIDENT WILLIAMS' APPOINTMENTS

The board passed motions to approve the following candidates or appointments:

- **National Conference of Commissioners for Uniform State Laws** – President Williams proposes to submit the three names of Laura Ruth Talbert, Oklahoma City; Judge Matthew C. Beese, Broken Arrow; and Benjamin J. Barker, Enid, to Governor Stitt for consideration and one appointment to a term expiring June 1, 2028.
- **Oklahoma Real Estate Commission, Contract Forms Committee** – President Williams appoints the following members to fill two vacancies with terms expiring July 1, 2028: Christopher Lance Carter, Tulsa, and John Maxwell Nowakoski, Edmond.

President Williams also made the following appointment that did not require board approval:

- **Legal Ethics Advisory Panel (LEAP), Tulsa Panel** – President Williams reappoints Joseph V. Allen, Tulsa, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2027.

PRESIDENT-ELECT PECKIO'S APPOINTMENTS

The board passed motions to approve the following appointments to the Budget Committee as set forth below:

- **Members of the House of Delegates** – Kaia K. Kennedy, Tulsa, HOD; Chris D. Jones, Durant, HOD; Cody J. Cooper, Oklahoma City, HOD/BOG
- **Board of Governors** – Jeff D. Trevillon, Oklahoma City, BOG; Miles Pringle, Oklahoma City, BOG; Lucas M. West, Norman, BOG
- **Young Lawyers Division** – Chairperson Taylor C. Venus, Enid, Chair-Elect Alexandra Jordan Gage, Tulsa

UPDATED PUBLIC INFORMATION BROCHURES

Executive Director Johnson explained the history of the public information brochures, which are aimed at improving the quality of legal services to the public. She presented a recently updated brochure on the topic of homebuying for the board's consideration and review.

LAW DAY/ASK A LAWYER 2025 UPDATE

Law Day Committee Liaison Philip Hixon reported on the large current backlog of unanswered emails that were received in conjunction with the Ask A Lawyer event held May 1. Educational Programs Director McCormick described current work being done to organize and categorize the messages to more efficiently respond to the backlog.

HERO DAY PLANS

Military Assistance Committee Co-Chairperson S. Shea Bracken reported on current planning for the event aimed at providing legal services support for veterans and military servicemembers. The committee is considering hosting the event Nov. 14 at the Oklahoma Bar Center. Plans call for an in-person event involving a free consultation for veterans/military attendees and a free CLE for lawyer volunteers. Discussion took place related to the potential need for malpractice insurance as well as informed consent and limited-scope waivers for attendees.

UPCOMING OBA AND COUNTY BAR EVENTS – 2025

President Williams reviewed upcoming bar-related events and activities involving the Board of Governors, including the Solo & Small Firm Conference at the OKANA Resort in Oklahoma City on July 16-18, the Tulsa County Bar Association and Bar Foundation Annual Meeting in Tulsa on Aug. 21 and the joint reception and Board of Governors meeting held in conjunction with the Boiling Springs Legal Institute in Woodward on Sept. 16-17.

NEXT BOARD MEETING

The Board of Governors met in July, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held virtually on Friday, Aug. 22.

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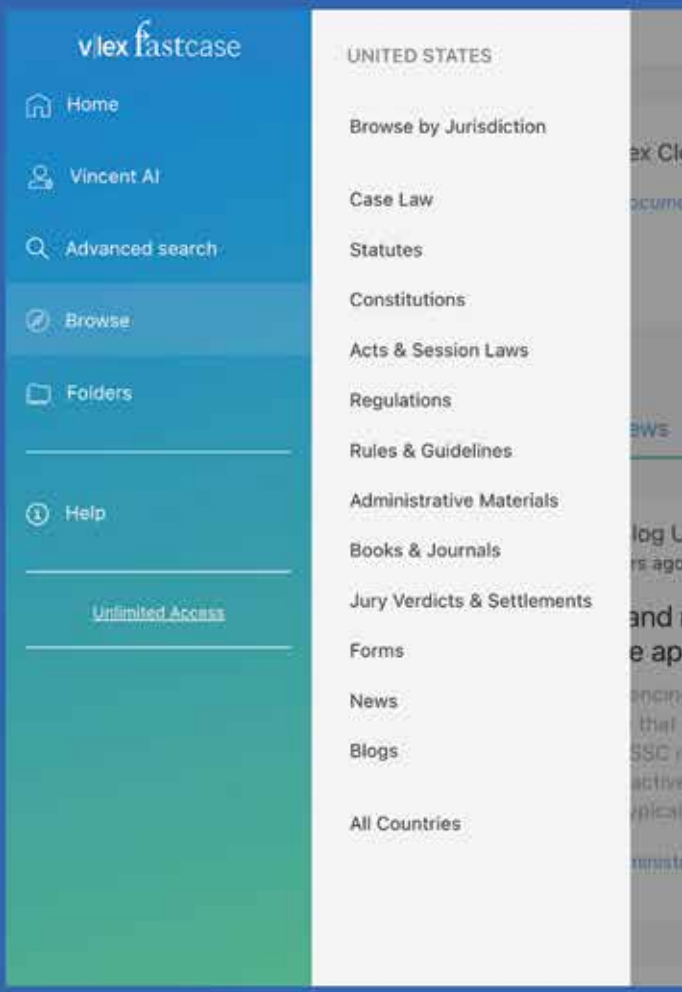

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Bridging the Justice Gap: What We Learned From the 2024 Legal Needs Survey

By Renee DeMoss

When it comes to increasing access to justice in Oklahoma, there's no substitute for listening. Listening to the stories, obstacles and opportunities that exist in our state. The Oklahoma Bar Foundation recently completed its 2024 Promoting Access to Justice Survey. The survey was wide-reaching and designed to identify and understand the most pressing legal needs across the state. Drawing on data from all 77 counties and insights from more than 1,000 Oklahoma attorneys, the survey report sheds new light on where gaps in legal services persist and what solutions hold the most promise.

This survey is another important step in ensuring the OBF's grantmaking and programming goals align with the real-world needs experienced by Oklahomans, as observed by the attorneys who serve them. Legal professionals across the state responded to our survey, which divided the state into eight different regions. The survey showed populations in the northwest, southeast and southwest regions are underserved in terms of IOLTA dollars. Access to justice has already been identified as a critical priority in these communities, and our findings provide a clear direction for bringing essential legal resources to close the justice gap for all Oklahomans.

HIGH DEMAND, SHARED NEEDS

The survey report confirms what we already know: Legal needs in Oklahoma are widespread and urgent. Across the board, attorneys identified four primary areas of consistent concern:

- Legal assistance for the elderly
- Affordable housing and eviction prevention
- Family law matters
- Immigration and citizenship issues

What's striking is how consistently these top needs were cited in all three underserved regions. While some slight regional variations appear, such as consumer protection and debt relief replacing immigration as the fourth most pressing need in the southwest, the broader picture suggests shared statewide challenges.

COMMON BARRIERS, REGIONAL REALITIES

Responses from Oklahoma attorneys also helped shine a light on the barriers their clients face when trying to access legal services. Unsurprisingly, cost remains the single greatest hurdle, especially in the southeast.

In the southwest, lawyers noted that many of their clients are simply unaware of the existing legal resources or unsure of where to turn for help. Attorneys in the northwest emphasized geographic challenges, including the limited availability of legal aid providers and the long travel distances required to receive services.

These insights reinforce the fact that there's no one-size-fits-all solution. Improving access to justice means addressing both common statewide problems and region-specific limitations.

UNDERSERVED OKLAHOMANS

The survey report also underscores how legal access gaps are especially wide for certain populations.

- Low-income clients remain at a significant disadvantage due to affordability and the limited availability of pro bono resources.
- Clients with disabilities face physical and communication barriers, with the southeast reporting particular concerns.
- Clients with limited English skills struggle to find attorneys or materials in their primary language. This challenge seems especially prominent in the southwest.

TECHNOLOGY: BRIDGE OR BARRIER?

Though technology offers new opportunities to reach remote or underserved communities, many people do not have ready access to computers and the internet in these regions, and they have low literacy rates in the use of technology. Oklahoma attorneys, however, report great interest in online tools, like virtual consultations and self-help legal guides. This suggests that the right infrastructure and technology can help bridge the justice gap.

WHAT COMES NEXT?

The insights from our survey report provide actionable next steps. The OBF has outlined several key recommendations to turn this research into results:

1) Community-Based Collaboration: By building stronger partnerships with regional lawyers, bar associations and community organizations, the OBF aims to increase impact at the local level.
2) Strategic Grantmaking: The OBF will look to prioritize community-based organizations tackling elder law, housing, family law and immigration issues. Attention will be given to regional disparities, such as consumer debt relief in the southwest and rural access in the northwest.
3) Innovation and Capacity-Building Grants: The OBF will explore new grants to support creative solutions, such as mobile legal clinics, virtual legal platforms and AI-assisted tools.
4) Technology Infrastructure: Internally, we will invest in upgraded systems to improve communication, grant processing and fundraising, ensuring that our organization can keep pace with the needs we seek to meet.

STAY TUNED

Our survey report is just the beginning. In the coming months, the OBF will share deeper dives into regional data, promising practices from grantees and examples of impact in action. We invite you to stay engaged, lend your voice and help expand access to justice for all Oklahomans.

You can access the survey report at https://bit.ly/4nUT2vm.

Ms. DeMoss is the executive director of the Oklahoma Bar Foundation.

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SHOW YOUR CREATIVE SIDE ON THE BACK PAGE

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

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

Upcoming Elections for the YLD's Future Leaders

By Laura R. Talbert

SUMMER IS IN FULL SWING in Oklahoma, meaning long days, warm nights and a full calendar – from afternoons at the pool and backyard barbecues to lake weekends and vacations. But amid all the fun, there's another event young lawyers shouldn't overlook: elections for the 2026 Young Lawyers Division Board of Directors.

As the year nears an end, the YLD is looking to the future. The new Board of Directors will drive the division forward by serving communities across the state, volunteering for those in need and guiding new lawyers. If you're a dedicated young lawyer, we encourage you to participate.

If you were first admitted to the practice of law in the past 10 years and are in good standing, congratulations – you're already a member of the YLD. There's no separate registration and no additional dues. What you can do, though, is take a more active role by submitting nominating petitions for the upcoming elections.

Each year, the YLD elects a new Board of Directors, made up of volunteer attorneys from across the state. These individuals serve as advocates for their fellow young lawyers by planning events, offering support and shaping the direction of YLD programming in their districts. But most importantly, they represent the young lawyers' voices. By stepping up to run for a vacancy, you have the chance to make a meaningful impact on your district and potentially change the trajectory of its future.

So before summer winds down, take a moment to consider throwing your name into the ring. A little involvement now could lead to bigger opportunities for your practice, your connections and your community.

In the sidebar is a list of vacancies for 2026. Nominating petitions will be accepted through Aug. 15. Those offices that are contested will be set for voting, and ballots will be sent by email. Those offices that are not contested will be deemed elected by acclamation.

NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA YLD and must be submitted by Aug. 15 at 5 p.m. A separate petition must be filed for each opening, except that a petition for a directorship shall be valid for one-year and two-year terms and at-large positions. A person must be eligible for division membership for the entire term for which elected.

ELIGIBILITY

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA YLD. Membership is automatic – if you were first admitted to the practice of law in 2015 or later, you are a member of the OBA YLD!

ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In September, a list of all eligible candidates will be published in the *Oklahoma Bar Journal*. Ballots will be emailed around Oct. 1 to all YLD members at the email address in the official OBA roster. All members of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee shall only vote in the event of a tie. For additional information, see the OBA YLD bylaws at www.okbar.org/yld/bylaws.

DEADLINE

Nominating petitions, accompanied by a photo and a bio of 350 words or less for publication in the *Oklahoma Bar Journal*, must be forwarded to lrtalbert@gmail.com no later than Friday, Aug. 15. Results of the election will be announced at the YLD meeting during the OBA Annual Meeting, Nov. 6-7 at the Sheraton Oklahoma City Downtown Hotel.

TIPS FROM THE NOMINATING COMMITTEE CHAIR

- Visit https://bit.ly/4f94S10 for a sample nominating petition. This will help give you an idea of the format and information required by OBA YLD bylaws (one is also available from

the Nominating Committee). Email lrtalbert@gmail.com to request a nominating petition.

- Obtain signatures (electronic signatures are permitted) on your nominating petition from at least 10 lawyers who were first admitted to practice law in the state of Oklahoma within the past 10 years. Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
- Take your petition to local county bar meetings or the courthouse and introduce yourself to other young lawyers while asking them to sign – it's a good way to start networking.
- You can have more than one petition for the same position and add the total number of original signatures.
- Don't wait until the last minute – petitions that are scanned and emailed after the deadline will not be accepted.
- Membership eligibility extends to Dec. 31 of any year that you are eligible.
- Membership eligibility starts from the date of your first admission to the practice of law, even if outside of the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the *Oklahoma Bar Journal*.

2026 YLD BOARD VACANCIES

OFFICERS

Officer positions serve a one-year term.

Chairperson-Elect: Any member of the division who has previously served for at least one year on the OBA YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2027.

Treasurer: Any member of the OBA YLD Board of Directors may be elected by the membership of the division to serve in this office.

Secretary: Any member of the OBA YLD Board of Directors may be elected by the membership of the division to serve in this office.

BOARD OF DIRECTORS

Board of Directors positions serve a two-year term.

District 2: Atoka, Bryan, Choctaw, Haskell, Johnson, Latimer, LeFlore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties

District 3: Oklahoma County

District 4: Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties

District 5: Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties

District 6: Tulsa County

District 7: Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties

At-Large: All counties

At-Large Rural: All counties except Oklahoma and Tulsa

All biographical data must be submitted by email, with no exceptions. Petitions submitted without a photograph and/or brief bio are subject to disqualification at the discretion of the Nominating Committee.

Ms. Talbert is the chief legal officer for the Oklahoma Office of Juvenile Affairs. She has served on the YLD board for eight years and is the current immediate past chair.

ON THE MOVE

A. Grant Schwabe has joined the Tulsa office of Pray Walker as an associate. He has experience in commercial litigation, representing clients in banking and financial services litigation, real estate transactions, construction disputes, oil and gas matters and labor and employment law. In addition to his trial experience, Mr. Schwabe has represented clients in over 60 appeals, ranging from cases before the Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court to the U.S. Court of Appeals for the 10th Circuit.

Tara A. LaClair, **Jennifer N. Lamirand** and **Bruce W. Day** have joined the new Oklahoma City office of Bressler, Amery & Ross. Ms. LaClair is a principal and trial lawyer with a focus on financial institutions and securities litigation. She practices in the areas of financial services and securities litigation. She also handles complex and general litigation, representing insurance companies in bad faith litigation and claims litigation, as well as trust companies and fiduciaries. She is also licensed to practice in California and Michigan. Ms. LaClair received her J.D. from the Pepperdine Caruso School of Law and her LL.M. in securities and financial institution regulation from Georgetown Law. Ms. Lamirand is a principal and focuses her practice on litigation in the areas of tribal law, federal Indian law, gaming, securities, contracts and insurance defense. She serves as an associate justice on the Citizen Potawatomi Nation Supreme Court and volunteers and provides pro bono services for Oklahoma Indian Legal Services and the Public Counsel of Los Angeles. Ms. Lamirand is also licensed in California. She received her J.D. from the Notre Dame Law School and her LL.M. from the London School of Economics and Political Science. Mr. Day is of counsel and has a national practice in securities and health care litigation and public policy matters. He works closely with the firm's Labor & Employment and Energy & Natural Resources practice groups.

Allison Garrett has joined the Oklahoma City office of Spencer Fane LLP as an of counsel attorney in the Litigation and Dispute Resolution Practice Group. She will focus on the firm's higher education practice. Most recently, Ms. Garrett served as chancellor for the Oklahoma State Regents for Higher Education, where she oversaw 25 public colleges and universities and their local governing boards, informed higher education policy, advocated for funding and more. She also worked as general counsel and vice president of Walmart Stores Inc.'s corporate division and later as vice president of the corporation's benefits compliance and planning. Upon shifting to higher education, she served as an associate professor of law at Faulkner University, senior vice president for academic affairs at OCU, executive vice president of Abilene Christian University and president of Emporia State University before her tenure as the state chancellor. She was the first woman and ninth overall chancellor of the Oklahoma State Regents for Higher Education. Ms. Garrett received her J.D. from the TU College of Law and her LL.M. from Georgetown Law. While earning her LL.M., she worked in private practice and served as a staff attorney for the U.S. Securities and Exchange Commission. She is also licensed in Arkansas.

Patrick H. Kernan has joined Helton Law Firm in Tulsa as of counsel. He has more than 50 years of legal experience, with a focus on complex business litigation and trust and estate disputes. He has served as counsel to the Oklahoma Board of Bar Examiners for more than four decades and has acted as an adjunct settlement magistrate for the U.S. District Court for the Northern District of Oklahoma since 2008.

Jordan L. Clapp, **Nicholas N. Hartman** and **Michael D. Orcutt** have joined the Tulsa law firm of Atkinson, Brittingham, Gladd, Fiasco & Edmonds as associates. Ms. Clapp received her J.D. with highest honors from the TU College of Law in 2023. While in law school, she was a recipient of the Oklahoma Bar Foundation W.B. Clark Memorial Scholarship and CALI awards in Writing Seminar: Steal this Seminar and Public Defender Clinic and was a member of Phi Alpha Delta Law Fraternity. She practices civil litigation. Mr. Hartman received his J.D. with highest honors from the

TU College of Law in 2023. While in law school, he served as articles selection editor for the *Tulsa Law Review* and received CALI awards in Legal Writing, Law & Literature, Criminal Law and Criminal Justice & Public Policy. He practices civil litigation with an emphasis on research and writing. Mr. Orcutt received his J.D. with highest honors from the TU College of Law in 2024. While in law school, he received CALI awards in Basic Oil & Gas Law and Piracy, Copiers & Copyright in Law & Culture. He practices civil litigation with an emphasis on research and writing.

Matthew K. Felty and **Heath W. Garwood** have joined the Oklahoma City law firm of Ryan Whaley. Mr. Felty is a director at the firm. He has complex litigation experience, representing both companies and individuals across a variety of practice areas, including oil and gas, manufacturers' products liability, insurance coverage, catastrophic personal injury, complex commercial disputes, aviation disputes and engineering and construction litigation. Mr. Felty received his J.D. from the OU College of Law in 2012. Mr. Garwood is a trial lawyer with a practice primarily focused on complex civil litigation. His litigation experience encompasses a variety of practice areas, including energy, construction, complex commercial disputes, real property disputes and catastrophic personal injury and wrongful death. Additionally, Mr. Garwood represents both individuals and entities with transactional and general counsel services within the oil and gas industry. The transactional portion of his energy practice includes negotiating oil and gas leases, assisting with title curative documents and negotiating and drafting industry-specific agreements. He received his J.D. from the OU College of Law.

Jason Seay has joined the Tulsa office of GableGotwals as of counsel. He has experience advising clients on health care regulatory compliance, data privacy and security, artificial intelligence governance and broader regulatory matters. Prior to joining the firm, he held in-house legal and compliance leadership roles at companies including GeneDx. He also served as associate general counsel for a regional health system in Alaska and represented state agencies as an assistant attorney general for the state of Oklahoma. He has additional private practice experience in health care law, civil litigation and administrative law. Mr. Seay received his J.D. from the TU College of Law.

HOW TO PLACE AN ANNOUNCEMENT:

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

Submit news items to:

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

Articles for the October issue must be received by Sept. 1.

KUDOS

Judge Kim Conyers has been named the 2025 Post Adjudication Review Board Judicial Partner of the Year in recognition of her support of the Oklahoma Commission on Children and Youth Post Adjudication Review Board and service to the juvenile justice system. Judge Conyers was appointed as a special judge in 2023. She received her J.D. from the OU College of Law in 2002.

Robert Don Gifford and **Taylor Thompson** have been elected to serve three-year terms on the American Civil Liberties Union of Oklahoma Board of Directors. Mr. Gifford is a solo practitioner in Oklahoma City, and Ms. Thompson is an Oklahoma County assistant public defender. Mr. Gifford was also selected as a member of the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights. The commission is an independent, bipartisan agency established by Congress in 1957 to focus on matters of race, color, religion, sex, age, disability or national origin with advisory committees in every state and territory to advise on civil rights issues.

Steven A. Broussard has been elected to the Hall Estill Executive Committee. Mr. Broussard joined the firm in 1988 and practices in the Tulsa office's Labor & Employment Law Section, where he focuses on employment matters ranging from labor disputes to discrimination. This is his third time serving on the Executive Committee.

Heather Flynn Earnhart has been elected to the Hall Estill Board of Directors. She joined the firm in the Tulsa office in 2011. Ms. Earnhart focuses her practice on family law and general civil litigation. Her primary practice areas include divorce, child custody, paternity actions and premarital planning. In addition, she is a certified family and divorce mediator through the Mediation Institute.

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– Scott B. Goode, 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.

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In Memoriam

Paul T. Boudreaux of Broken Arrow died May 14. He was born Aug. 20, 1955, in Oklahoma City. He was a multi-letter athlete and an all-city basketball player at Mount St. Mary Catholic High School in Oklahoma City. Mr. Boudreaux graduated from OCU with a bachelor's degree in 1977, where he was a member of the Kappa Alpha Order. He received his J.D. from the OU College of Law in 1980. He was a trial attorney on the defense side before becoming a plaintiff's advocate. He focused on the prosecution of medical and dental malpractice and insurance bad faith litigation.

John Jay Bowling of Jenks died May 17. He was born March 18, 1970, in Jefferson City, Missouri, and graduated from Purdue University in 1992 with a bachelor's degree in political science and communications. Mr. Bowling received his J.D. from the TU College of Law in 1995. He began his legal career in Tulsa as an associate for Martin & Associates and Best & Sharp. He then worked in-house at The Hanover Insurance Group, where he served as lead trial counsel for Oklahoma claims before becoming the assistant city attorney for Broken Arrow. Mr. Bowling returned to his insurance defense practice by joining Angela Ailes & Associates, where he remained for several years before joining his friends as a partner at the law firm of Aston, Mathis, Campbell. His legal career spanned over 30 years.

Earl Calvin Cates Jr. of Phoenix died Oct. 25, 2024. He was born March 3, 1953, in Tulsa. **Mr. Cates enlisted in the U.S. Navy in 1970 and served as a hospital corpsman.** After his honorable release, he earned an associate broker license and joined his father's brokerage, holding his license in Wyoming for 45 years. He graduated from Utah State University with a bachelor's degree and received his J.D. from the TU College of Law in 1987. Mr. Cates started his law practice in Sapulpa and served as an attorney advisor in the Social Security Administration Office of Hearings and Appeals in Tulsa and Salt Lake City. He was appointed as a federal administrative law judge by President George W. Bush and worked for the Social Security Administration in Florence, Alabama, and later in Phoenix. He retired from the federal government after nearly 40 years. He was also a member of the Utah State Bar Association and The Church of Jesus Christ of Latter-day Saints, where he served as ward librarian and assistant ward clerk. He was an assistant scoutmaster for several years and joined in many outdoor adventures.

Richard H. Champlin of Oklahoma City died April 2. He was born May 12, 1935. He graduated from OU, where he was a member of Phi Delta Theta and the senior class president. **Mr. Champlin received his commission as a second lieutenant in the U.S. Army Signal Corps and was assigned to the 16th Signal Battalion at Fort Monmouth, New Jersey, and Fort Hood, Texas, as a training officer for the 53rd Signal Battalion.** He received his J.D. from the OU College of Law in 1961. During law school, he was senior class president and a member of Phi Alpha Delta. His law career began with Leeway Motor Freight, where he retired in 1981 as vice president and general counsel. He joined the Transportation Lawyers Association in 1964, of which he served as president in 1987, and received the Distinguished Service Award in 1994 and the Lifetime Achievement Award in 1996. He later became executive vice president of CL Frates and Co., retiring in 1999. During his time with Frates, he was vice president of BancInsure Inc. Mr. Champlin was a 50-year milestone member of the OBA and a 50-year member of the Oklahoma City Golf & Country Club. His community involvement included serving as vice president and director of the Oklahoma City All Sports Association and as a trustee of the Westminster Presbyterian Church.

William Craig Collier of Ardmore died April 14, 2024. He was born June 28, 1953, in Altus. He received his J.D. from the OU College of Law in 1991. Mr. Collier was a member of The Church of Jesus Christ of Latter-day Saints most of his life and served as a clerk for many years with the ward in Mariposa, California. He was also involved with the Boy Scouts of America in California and Oklahoma, serving as a scoutmaster. Mr. Collier volunteered to help with legal issues pro bono and at local soup kitchens.

Laura Jean Cooke of Edmond died May 1, 2024. She was born Sept. 24, 1951. Ms. Cook received her J.D. from the OU College of Law in 1985.

Kevin Lee Dodson of Pryor died April 28. He was born Sept. 2, 1974. He graduated from Pryor High School in 1993 and from OSU with a bachelor's degree in agricultural economics in 1997. Mr. Dodson received his J.D. from the TU College of Law in 2001. He served as a municipal judge for both Pryor and Locust Grove. Early in his legal career, he interned under former Sen. Don Nickles and also worked as a graduate assistant at the TU College of Law. He was a member of the First Free Will Baptist Church in Pryor and a member of Gideons International for the past 10 years.

Larry Rodmon Edwards of Muskogee died May 12. He was born April 4, 1958, in Tulsa. He graduated from Mason High School and OSU, where he was a member of Kappa Sigma. Mr. Edwards worked as a market analyst after graduation. He attended night classes and received his J.D. from the TU College of Law in 1990. By that time, he was already leading the Juvenile Bureau at the Tulsa County District Attorney's Office. He served as an assistant district attorney in Tulsa for nine years. Over the course of his career, he also trained law enforcement professionals nationwide on principles of criminal and constitutional law. Mr. Edwards worked in private practice as a defense attorney for nine years before he returned to public service as the first assistant for the Rogers, Mayes and Craig counties district attorney's offices. He rejoined the Tulsa County District Attorney's Office as a homicide prosecutor in 2018. In January 2020, he was asked to serve as first assistant for the Muskogee County District Attorney's Office and was appointed as Muskogee County's district attorney by Gov. Kevin Stitt in October 2021.

Randolph S. Francis of Tulsa died Feb. 11, 2024. He was born Aug. 10, 1955, in Tulsa. Mr. Francis graduated from Edison High School in 1973 and attended OU for three semesters. His next semester was completed on a student ship, the S.S. Universe Campus, and he later earned a bachelor's degree from the University of San Francisco in 1977. Mr. Francis received his J.D. from the TU College of Law in 1982. He practiced law initially in his father's law firm, Francis & Francis.

A. T. Gibson of Tulsa died April 24. He was born Jan. 6, 1928. Mr. Gibson received his J.D. from the OCU School of Law in 1963.

William D. Graves of Oklahoma City died April 2. He was born Oct. 4, 1937. He graduated from Putnam City High School in 1956 and was offered a track scholarship at OU. **Mr. Graves left OU in 1962 and joined the Oklahoma Army National Guard.** He received his J.D. from the OCU School of Law in 1968 and entered private practice. In 1978, he was elected to the Oklahoma House of Representatives, where he served for 24 years. He served 12 terms before term limits ended his tenure in 2004. Mr. Graves was elected Oklahoma County district judge in 2006 and reelected in 2010 and 2014, serving 12 years.

Thomas H. Gudgel Jr. of Tulsa died March 29. He was born Dec. 15, 1933. He graduated from TU in 1958 and received his J.D. from the TU College of Law in 1961. He began his legal career as a Tulsa County public defender and an assistant district attorney. Mr. Gudgel later entered private practice as a litigator with the firms Gudgel, Scott & Winn and Gudgel, Scott & Associates. He served as treasurer of the Tulsa County Bar Association, an adjunct professor at the TU College of Law focusing on constitutional law, a state industrial court judge and later as senior vice president and general counsel for Blue Cross and Blue Shield of Oklahoma.

Ray F. Hamilton III of Tulsa died Dec. 4, 2024. He was born March 21, 1936. He graduated from College High School in Bartlesville in 1954 and from OU with a bachelor's degree in geological and petroleum engineering. Mr. Hamilton received his J.D. from the OU College of Law in 1966. **In 1960, he began his service as an infantry member of the U.S. Army and was honorably discharged at the rank of captain in the U.S. Army Reserve in 1974**. He spent his entire legal career practicing corporate law and eventually became a partner at the Tulsa law firm of Sneed, Lang, Trotter & Hamilton.

Bill C. Harris of Shawnee died Jan. 27. He was born Feb. 10, 1935. He graduated from OU with a bachelor's degree and received his J.D. from the OU College of Law in 1961. At OU, Mr. Harris was a member of Sigma Alpha Epsilon and the football team,

which won two national championships. **Mr. Harris served active and reserve duty in the U.S. Army for 11 years and was honorably discharged at the rank of captain.** He practiced law in Oklahoma City and Shawnee for 50 years and was a member of the United Presbyterian Church.

Christa Rochelle Hensley of Oklahoma City died April 28. She was born March 19, 1975, in Oklahoma City. She attended Harrah High School, where she was an all-state softball player. Ms. Hensley graduated from OSU with a bachelor's degree in biology in 1997 and became an eighth and ninth grade biology teacher. After teaching, she became a stay-at-home mom. She received her J.D. from the OCU School of Law in 2013 and practiced in the areas of criminal and employment law. Ms. Hensley was a member of City Church Moore and a bible study fellowship leader.

Karen M. Jayne of Oklahoma City died April 7. She was born Oct. 6, 1957. Ms. Jayne received her J.D. from Southwestern Law School in Los Angeles in 1990.

F. Lovell McMillin of Ardmore died Oct. 30. He was born July 25, 1936, in Ada. He graduated from Classen High School in 1954 and from OU with a bachelor's degree in accounting in 1958, where he served as president of Sigma Phi Epsilon. Mr. McMillin received his J.D. from the OU College of Law in 1960. He began his legal career at Fischl & Culp in Ardmore, where he practiced for 43 years. He held leadership roles, including president of the Oklahoma Association of Defense Counsel and chairman of the Oklahoma Board of Bar Examiners. He was recognized as one of three outstanding young Oklahomans. Mr. McMillian served on the Board of Directors for the First National Bank of Ardmore, including as chairman, for over 18 years. He also served as city commissioner for Ardmore and chaired the board of the Mercy Health Foundation.

Lynn Allan Mundell of Tulsa died April 18. He was born Dec. 21, 1948, in St. Joseph, Missouri. He graduated from the University of Missouri with a bachelor's degree in business administration in 1971. He was on the dean's honor roll and served as president of Alpha Kappa Psi. **In college, he joined the Army National Guard and served until being honorably discharged.** He received his J.D. from the TU College of Law in 1975. After law school, he opened his first law practice in Tulsa and practiced for 43 years until his retirement in 2019.

John Wayne Norman of Oklahoma City died May 24. He was born Feb. 18, 1944, in Duncan. He graduated with honors from Temple High School in 1962 and from OU with a bachelor's degree. Mr. Norman received his LL.B. *cum laude* from the OU College of Law. In 1968, he was admitted to the practice of law. He practiced in the areas of personal injury, product liability and wrongful death. In 1978, he was invited to join the Inner Circle of Advocates and served as president from 2003 to 2005.

Margaret J. Patterson of Tulsa died March 9. She was born July 8, 1933, in Casper, Wyoming. She attended Principia College and received her J.D. from the University of Wyoming College of Law in 1973. She worked as a private secretary for Sen. Frank A. Barrett in Washington, D.C., a legal secretary for Dawson, Nagel, Sherman & Howard in Denver and a deputy clerk for the 7th Judicial District Court in Casper before starting her legal career. She became an attorney for Phillips Petroleum Co. in the credit card department, from which she later retired. Ms. Patterson volunteered as first and second reader, treasurer and Sunday school superintendent for the Christian Science churches of Casper and Bartlesville. She served as a docent at the Woolaroc Museum & Wildlife Preserve, an advocate for CASA, a literacy tutor, a volunteer for the La Quinta Preservation Foundation and the president of Feminine Financiers. Ms. Patterson was a member of Chi Omega, the Casper Legal Secretaries Association, Business & Professional Women, the American Association of University Women, the Desk and Derrick Club of Tulsa, Daughters of the American Revolution and the American Bar Association.

J. Mark Phelps of Seminole died April 19. He was born July 24, 1951, in Seminole. Mr. Phelps graduated from OSU with a bachelor's degree in political science in 1973 and received his J.D. from the OU College of Law in 1981. He practiced law in Seminole for 45 years. He was involved in the Seminole Rotary Club, the Kiwanis Club of Seminole, the Seminole Lions Club and the National Champion Elks Lodge Ritual Team. For decades, he contributed to countless community causes and organizations.

Patrick C. Ryan of Oklahoma City died May 3. He was born June 15, 1935, in Clinton and attended St. Gregory's High School. **Mr. Ryan served in the U.S. Army, stationed in Washington, D.C.** He graduated from the University of Central Oklahoma in 1961 and attended night classes at the OCU School of

Law while working full time at the Oklahoma Insurance Department. He received his J.D. from the OCU School of Law in 1968. Mr. Ryan was named general counsel for the Oklahoma Insurance Department after graduation. He was appointed by the governor as director of the Oklahoma Department of Securities and later as director of the Oklahoma Department of Consumer Affairs. In 1974, Mr. Ryan was appointed to a judgeship at the Oklahoma Workers' Compensation Court, where he rose to the level of presiding judge and oversaw the Denver Davison Building. While serving as a judge, he also taught workers' compensation law as an adjunct professor at the OCU School of Law. In 1984, he formed the law firm known as Boettcher & Ryan, from which he retired in 1998 but continued to serve as "of counsel" to the firm (now known as Ryan Bisher Ryan & Simons). He was an OBA member for more than 56 years, earning his 50-year milestone anniversary pin in 2018.

Mitchell E. Shamas of Tulsa died April 7. He was born Oct. 15, 1948, in Bristow and graduated from Bristow High School in 1966. He attended OSU and graduated from OU in 1970. Mr. Shamas received his J.D. from the OU College of Law. He practiced in Oklahoma for 52 years, primarily in the areas of oil and gas, personal injury, workers' compensation and social security. His legal career began in Bristow before he joined the firm of Bailey, Ash & Romine in Okmulgee in 1974. He started his own firm in 1980 and moved to Tulsa in 1989. Mr. Shamas was honored with the OBA Outstanding Service to the Public Award in 1984 for his pro bono work for people impacted by a tornado in Morris.

Heidi Brown Shear of Swampscott, Massachusetts, died Jan. 1. She was born Oct. 22, 1958. She attended Tufts University, where she majored in political science. Ms. Shear received her J.D. from the Boston University School of Law in 1983, where she also earned an LL.M. in tax law. She worked at Maselan & Jones in Boston after law school, where she focused on tax and the Employee Retirement Income Security Act of 1974. She eventually moved to Oklahoma City to work with her husband as lawyers at LSB Industries. Ms. Shear retired and moved to Swampscott, becoming involved in the community. She served as president of the ReachArts Community Art Center, baby cuddler at Beverly Hospital and on boards for the *Jewish Journal*, the Women's Studies Research Center at Brandeis University and the Metrowest Women's Fund. Additionally, she started an art gallery in Boston for her husband's abstract paintings.

Donald Lee Sprague of Coalgate died Jan. 3, 2024. He was born Aug. 12, 1932, in Parker. He graduated from Coalgate High School in 1950, where he was the National FFA Organization president. **Mr. Sprague enlisted in the U.S. Army during the Korean War and was assigned to the 10th Special Forces Airborne (Green Berets) as a paratrooper.** He graduated from La Salle University and received his J.D. from the Temple University Beasley School of Law in 1964. Mr. Sprague practiced law for many years in Philadelphia while also maintaining some ranch operations in Coal County before returning to Oklahoma to expand his ranching operations in 1999.

Charles W. Stratton Jr. of Lawton died April 20. He was born July 5, 1935, in San Francisco. He graduated from Lawton High School, where he served as senior class president and district judge for boys' all-state. Judge Stratton attended OU and was a member of Phi Delta Theta. **He joined the U.S. Army in 1956 and spent three years on the East German border.** After his service, he graduated *cum laude* from Southwestern State University. Judge Stratton received his J.D. from the University of Louisville School of Law in 1964. He opened his first law practice in Mt. Washington, Kentucky, before returning to Lawton and opening a private practice. He served as a juvenile probation officer and professor of real estate, business law and economics at Cameron University and founded the Southwestern School of Real Estate. He was appointed as lead counsel and a board member of the American National Bank. Judge Stratton mentored younger attorneys and took pleasure in watching them prosper in their careers. In 1994, he was appointed special judge for Comanche County, and he was elected associate district judge in 1998, where he served four terms before retiring at the age of 80. He was honored with the Comanche County Bar Association Professionalism Award, the OBA Alma Wilson Award and the Gang Prevention Association Gang Prevention Award. Judge Stratton served the community as a board member for United Way of Southwest Oklahoma and Lawton Arts for All and as president of the Lawton Community Theatre and Lawton Country Club.

Clifton Decherd Thomas of Jenks died June 15. He was born July 31, 1973, in Alexandria, Louisiana. He graduated from Altus High School in 1992 and from OSU, where he earned a degree in agricultural communication. Mr. Thomas received his J.D. from the TU College of Law in 2004. He practiced in the areas of criminal and family law, and he was dedicated to advocating for others.

Arthur L. Thorp of Oklahoma City died Jan. 18, 2024. He was born Dec. 19, 1932, in Foss. He graduated from Stafford High School as the valedictorian and earned bachelor's degrees in history and education from Southwestern Oklahoma State University and accounting from OU. Mr. Thorp received his J.D. from the OCU School of Law in 1966. **He spent two years in the U.S. Army and was stationed at Fort Lee, Virginia, and Fort Sill, where he received a college deferment in 1956.** He was a member of the Soldier Creek Baptist Church in Midwest City and the American Institute of Certified Public Accountants, a 32nd degree Mason, a long-time secretary and the last worshipful master at Broadway Circle Lodge. Mr. Thorp was a partner at Owen & Thorp Inc. for over 50 years.

Charles D. Tomlins of Cape Coral, Florida, died Jan. 29. He was born April 28, 1933. Mr. Tomlins received his J.D. from the OU College of Law in 1958.

James Roll Tourtellotte of Oklahoma City died April 8. He was born May 12, 1935, in Wilburton. He attended Stillwater High School, where he was involved in wrestling, music, drama and debate. He graduated from OSU and received his J.D. from the OU College of Law. **Upon graduation, he was a commissioned officer in the Military Police Corps, where he served for three years.** After being discharged, he returned to Stillwater to enter private practice and served as a county attorney for Payne County. During this time, he served as vice president and president of the Oklahoma State County Attorney's Association. His other positions included general counsel of the Grand River Dam Authority, assistant general counsel for the electric side of the Federal Power Commission, assistant chief hearing council and Senior Executive Services member at the Nuclear Regulatory Commission. During his last four years at the NRC, he served as chairman of the Regulatory Reform Task Force. In 1985, Mr. Tourtellotte started his own law firm. He was a member of the International Nuclear Law Association and the Cosmos Club. For the next several years, he practiced law and started a lobbying firm as well. He spent the 1990s as the chief operating officer of Juno Systems, a company that provided services to investment banks in New York, Tokyo and Hong Kong. Mr. Tourtellotte was involved in the Town & Gown Theatre, where he appeared in several productions, a gospel quartet and the DC Masters as a swimmer.

Jerry Lee Venable of Beaver died Dec. 30, 2024. He was born May 17, 1945, in Beaver. Mr. Venable graduated from Beaver High School, where he was an all-state quarterback and won the state football championship in 1962. He graduated from OU and received his J.D. from the OU College of Law.

Carol Ann Walker of Oklahoma City died March 26. She was born on Dec. 15, 1951, in Stillwater. Ms. Walker received her J.D. from the OU College of Law in 1979.

Daniel G. Webber of Yukon died April 11. He was born June 5, 1942. He attended OSU, where he was a member of ROTC. **Mr. Webber served in the Oklahoma Army National Guard during the Vietnam era and was named to the Governor's Twenty for pistols and rifles.** He graduated from the University of Central Oklahoma in 1975 and received his J.D. from the OCU School of Law in 1978. Mr. Webber established a law practice based in Watonga and Kingfisher and served as a municipal judge in Okarche for 50 years. He also served as the city attorney in Watonga and as a judge in the courts of the Cheyenne and Arapaho tribes. Mr. Webber coached track and baseball at Holy Trinity Catholic School in Okarche and was a longtime booster of Watonga's sports programs.

Mickey Dan Wilson of Tulsa died April 18. He was born Dec. 5, 1931, in Tulsa. He graduated from Central High School in Tulsa in 1950 and attended TU, where he had a tennis scholarship and was a member of the cheer team and Sigma Chi. He graduated in 1954 with a bachelor's degree and received his J.D. from the OU College of Law in 1956. After law school, Mr. Wilson was appointed assistant county attorney in Tulsa County. **He entered the U.S. Air Force as a second lieutenant in 1957. He worked as a staff judge advocate, stationed in Crete, and he received an honorable discharge at the rank of captain in December 1959.** After his service, he returned to Tulsa to focus on corporate and commercial law. He was appointed as a bankruptcy judge for the U.S. District Court for the Northern District of Oklahoma in 1983. While on the bench, he was active in the American Bankruptcy Institute, the Commercial Law League of America

and the American Inns of Court. Mr. Wilson was also an adjunct professor at the O.W. Coburn School of Law and a guest speaker at seminars held by the ABA, the OBA and the Tulsa County Bar Association, among others. He was involved in the Boy Scouts of America and served on the boards of directors for the Indian Nations Council and the Tulsa Historical Society. He was a member of St. John's Episcopal Church, where he served as chancellor, vestryman, lay reader and usher chairman for many years. Mr. Wilson was honored with the Silver Beaver Award, the Award of Merit and the Founders Award, and he was elected to the Tulsa Hall of Fame in 2013.

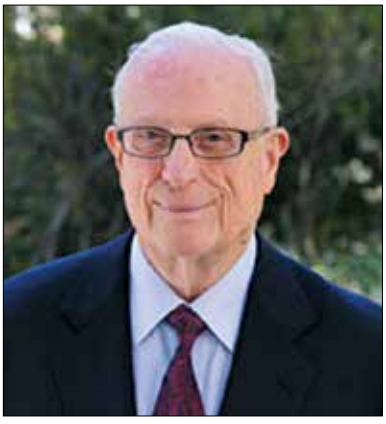
Charles Wren Wolfe of Magnolia, Texas, died Feb. 22. He was born April 25, 1935. Mr. Wolfe received his J.D. from the OCU School of Law in 1967.

Marvin B. York of Norman died March 22. He was born June 26, 1932, in Fredonia, Kansas. **After graduating from Claremore High School, he joined the U.S. Air Force and played trombone in the Air Force Jazz Band**. Upon discharge, he earned degrees in English and instrumental music from Northeastern State University. He taught honors high school English to college-bound students in Kansas and at U.S. Grant High School in Oklahoma City while attending night school at the OCU School of Law, where he received his J.D. in 1963. Mr. York was elected to the Oklahoma Legislature in 1968. He served in the Oklahoma House of Representatives and Senate, where he was elected president and pro tempore. While serving in the Legislature, Mr. York was credited with spearheading the creation of Oklahoma City Community College. He also worked with Oklahoma City, the state and the Chickasaw and Cherokee nations to bring the First Americans Museum to fruition and brokered an agreement with legislative leaders to enact a bond issue for the continued development of the project. Mr. York was honored with the Distinguished Alumnus Award from Oklahoma City Community College in 1982 and the First Northeastern State University Distinguished Graduate Award in 1984. He was named an honorary member of the OCCC Alumni Hall of Fame in 2012.

William G. Paul

Nov. 25, 1930 – June 24, 2025

1976 OBA President



William G. "Bill" Paul of Oklahoma City died June 24 at the age of 94. He was born Nov. 25, 1930, in Pauls Valley. He graduated from Pauls Valley High School as valedictorian in 1948, where he was president of the student council, played on the football team and was in the band. Mr. Paul graduated from OU in 1952. During college, he was selected as the outstanding freshman student in 1949 and the outstanding Navy ROTC student in each of his four years in the unit, where he was the student battalion commander. He was involved in the varsity debate team, Phi Gamma Delta, Phi Beta Kappa, the university aviation team and PE-ET, where he served as president, and was awarded the Gold Letzeiser Medal as the outstanding male graduate in the university. **Mr. Paul served two years of active duty in the U.S. Marine Corps, including service in Virginia, California and Korea. He was released from active duty in July 1954 and continued as an officer in the reserves, serving annually on two weeks of active duty and rising to the rank of colonel.** He resumed law school in 1954 and was a member of the Order of the Coif and Phi Delta Phi. He also served on the *Oklahoma Law Review* Board of Editors and as a research assistant to the dean during his last year. He received his J.D. from the OU College of Law in 1956 and had a legal career that spanned nearly 70 years. Mr. Paul briefly practiced in Norman before joining Crowe & Dunlevy in Oklahoma City. Except for the time when he was with Phillips Petroleum Co., he continued his affiliation with Crowe & Dunlevy until his death. At the firm, he was an active trial lawyer and served as managing partner of the firm for six years following the death of V.P. Crowe. He served as president of the Oklahoma County Bar Association in 1971 and the OBA in 1976. Mr. Paul was elected as a Fellow of the American College of Trial Lawyers in 1978. In 1986, he was named president of the National Conference of Bar Presidents, and from 1999 to 2000, he served as president of the American Bar Association, one of only three Oklahoma attorneys to serve in that role and the first Native American (Chickasaw) to lead the ABA. He was inducted into the Oklahoma Hall of Fame in 2003.

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The Buffalo

By Amy Gioletti

WE ARRIVE AT THE Jackson Hole Airport in mid-afternoon, exiting the plane down narrow stairs directly onto the tarmac. We are greeted by the majestic Teton Range, snowcaps nestled high against a denim blue sky, a dramatic welcome sign.

After collecting our luggage, we head to the rental car counter. We had reserved the cheapest economy car for our trip to explore the Tetons and Yellowstone National Park, reasoning that it was just the two of us, we wouldn't need all-wheel drive in summer, and we weren't planning any off-roading.

"Would you like to purchase the extra insurance?" the agent probes.

We look at each other. "No, that won't be necessary," my partner, Lauren, responds.

The agent pauses dramatically, then states, "Just so you know, an angry buffalo can easily flip a small car. It happens out here."

We look at each other again. "We'll be fine," I say, with teetering confidence.

I've read everything I can to prepare. Wake up early to beat the crowds. Don't approach the buffalo. Be patient. Carry bear spray. These warnings make me feel terrified and exhilarated, as if we are embarking on a risky adventure or an extreme sport. We commit the advice to memory, dutifully purchasing bear spray as our first order of business.

One afternoon, while driving north through Yellowstone, we notice the car ahead of us begin to slow down. And then we slow down. And then we stop. And then we see it. Slowly lumbering toward us down the center line of the road, as if it's hugging a makeshift balance beam, is a giant, brown buffalo.

"Oh my God," I exclaim, starting to reach toward my feet.

"Don't do it," Lauren commands from the driver's seat.

She knows exactly what I want to do, which is to retrieve my camera from the floorboard.

"Seriously. Do not move," she whispers sternly as the buffalo continues to stroll lazily toward our car. I scan my memory, but I can recall no advice for this moment. Almost instinctively, we both face the windshield as still and silent as stone statues, holding our breath.

After what feels like an eternity, the buffalo approaches the driver's side door and stops. My peripheral vision tells me the large creature is two inches away from the glass, maybe closer. It may as well be touching the car. It is as big as the car. I can see its left eye peering in at us, feel that coffee-colored orb penetrating the interior of the car with its gaze. Our hearts pounding, it feels like the once seemingly endless space all around us has been shrink-wrapped. I imagine the impact, imagine the car careening down the mountainside to the valley below. We might not make it out alive.

"I love you," we whisper.

And then, just as it arrived, the buffalo lumbers slowly away, following the center line like an elephant walking a tightrope. We exhale in stunned silence. After a beat, I turn slowly to observe the buffalo approach the car behind us, cantankerous and calculating, stopping to conduct another eerily slow inspection of the inhabitants for signs of the slightest misdeed.

As we begin to drive onward, I turn to Lauren with the few words I can muster and sigh, "We should have bought the extra insurance."

Ms. Gioletti works for a federal agency in Oklahoma City.

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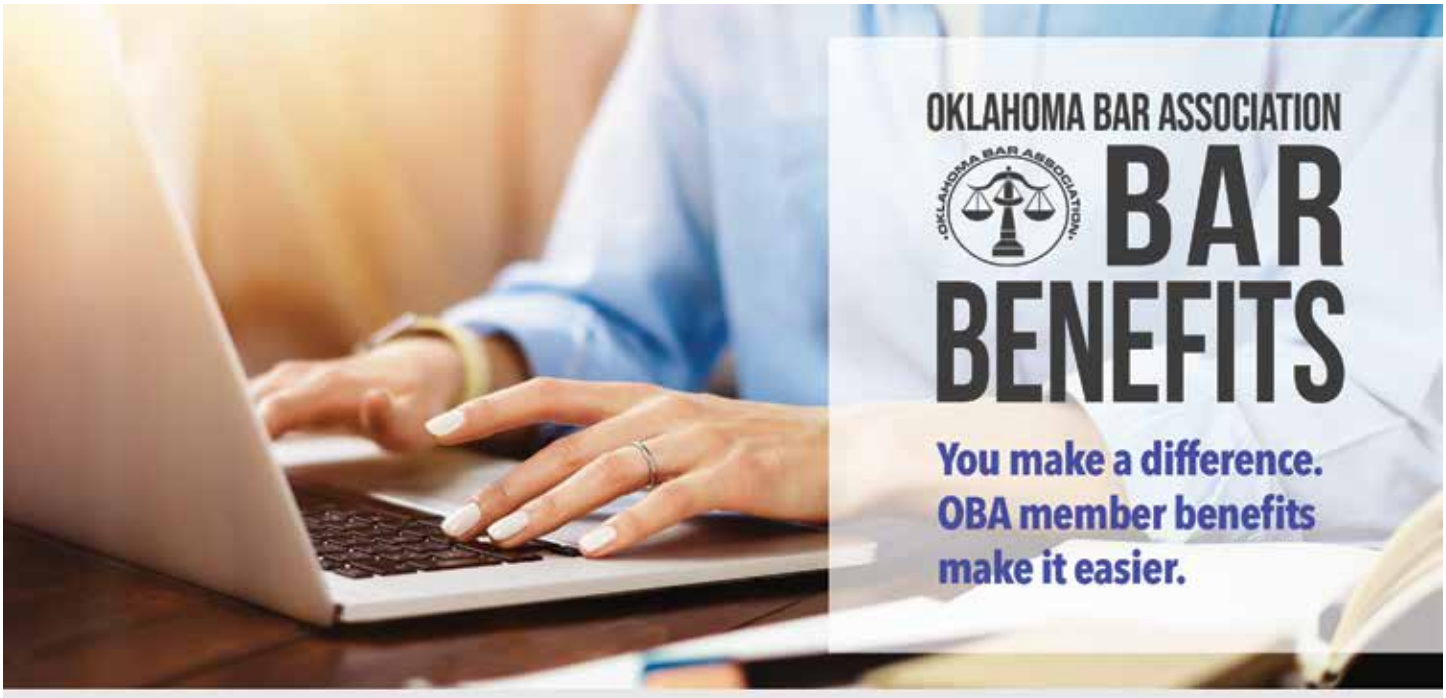

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