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THE OKLAHOMA BAR
Journal
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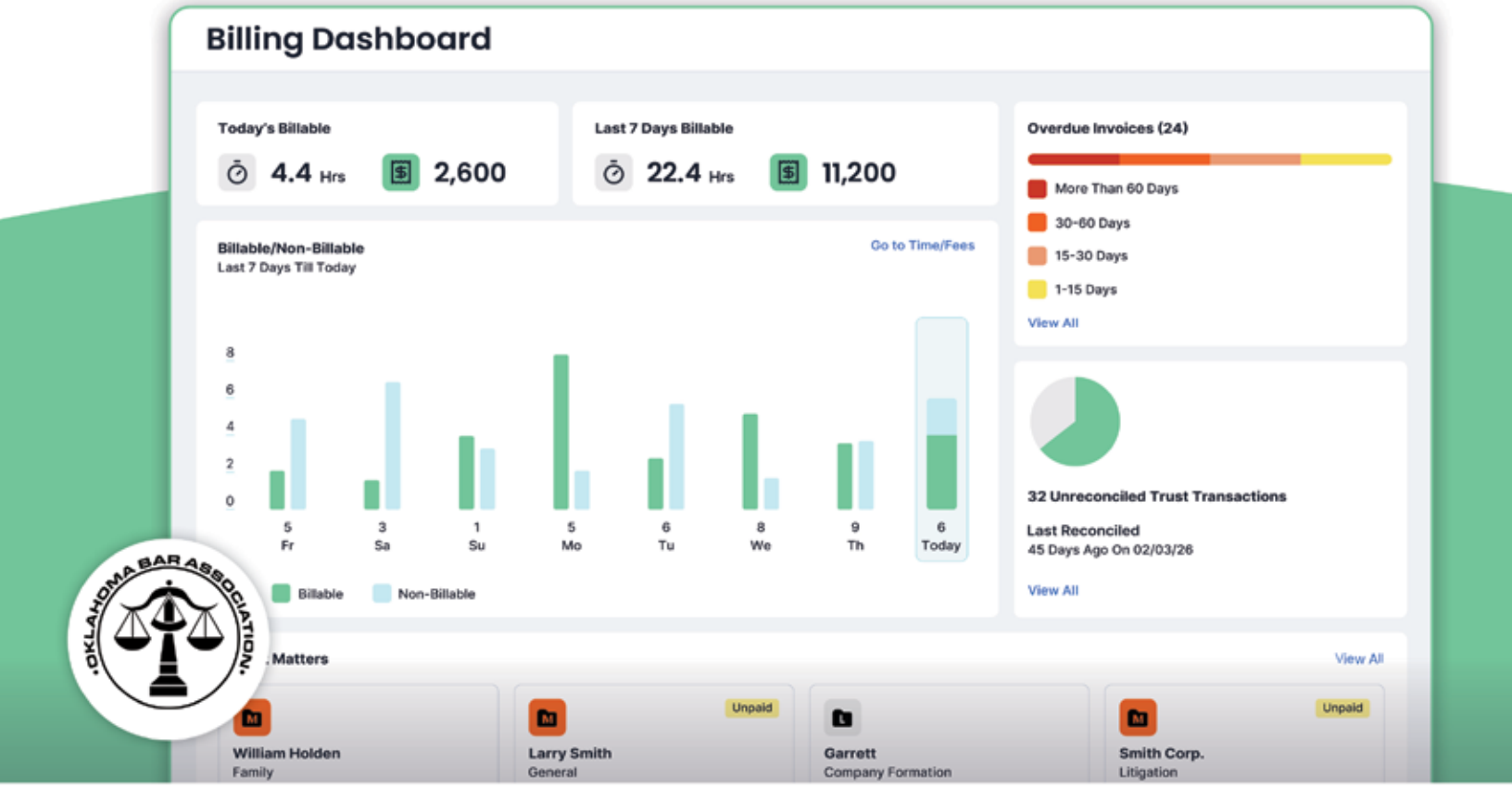

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OKLAHOMA WRONGFUL CONVICTIONS:

Why Should You Care?

Moderator: Jim T. Priest, J.D., Advisory Board Member, Oklahoma Innocence Project

A discussion about the ethical responsibilities of attorneys and ordinary citizens to eliminate wrongful convictions

AGENDA

11:30 a.m. **Lunch provided**

12:00 p.m. **For the Defense:** Andrea Miller, J.D., Legal Director, Oklahoma Innocence Project

12:30 p.m. **For the State:** Vicki Behenna, J.D., Oklahoma County District Attorney

1:00 p.m. **For the Innocents:** Jim McCloskey, Founder of Centurion, the first organization in the United States to actively work to exonerate wrongfully convicted people. Co-author, with John Grisham, of the recently released book *Framed*.

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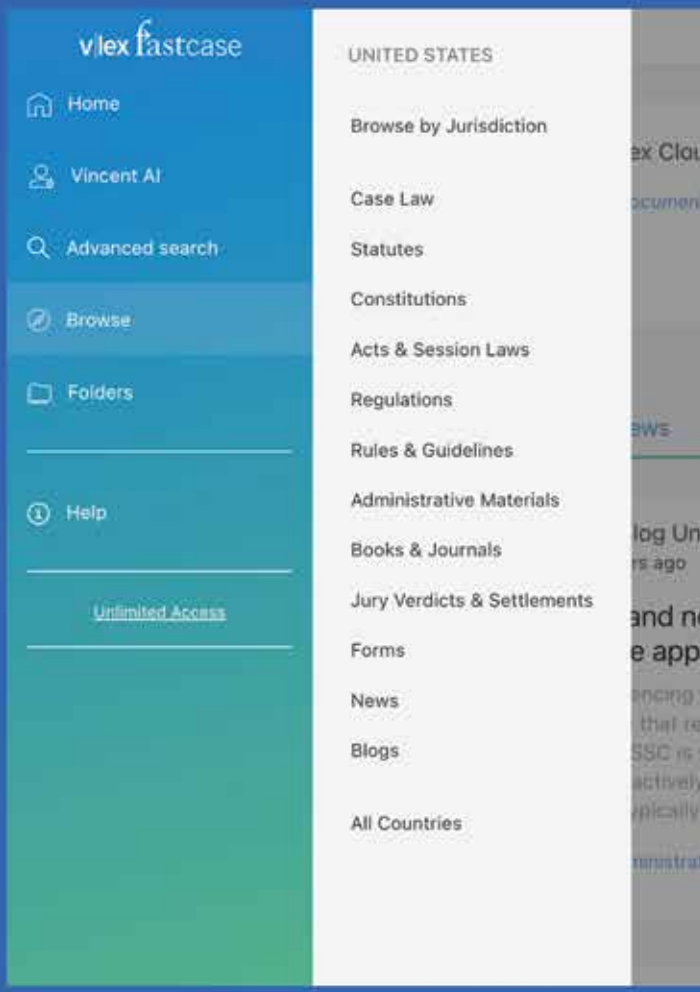

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'I Came Into This Room for a Reason ...'

By D. Kenyon "Ken" Williams Jr.

"I CAME INTO THIS ROOM FOR A REASON" is a comment we have all made to ourselves from time to time (go ahead, admit it; you know you have!). You leave one room on a mission and find yourself in another room with no clue about the original mission – until you go back to your starting point and the memory of the mission is triggered, or you still cannot remember why. And no, this is not a sign that your faculties are failing. According to a 2011 University of Notre Dame study, "Walking Through Doorways Causes Forgetting," it is the act of walking through the doorway into a different venue that "purges" our memory, as if our brain interprets the change of venue as completion of an event, rendering the old memory irrelevant. At least that is the conclusion of that study.

But just imagine if this happened to you constantly and randomly throughout your day, which is just one of the many signs of dementia or other neurocognitive impairment. And no, I am not suggesting that you are suffering from either just because you forgot why you came into the room!

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

What I am referring to is the challenging task of distinguishing between signs of normal aging and signs of more serious cognitive decline. The following are just a few examples.

Normal Aging

- Accurate but slower than typical;
- Memory lapses the individual notices;
- Difficulty remembering names and familiar words;
- Forgetting what you are looking for in the other room;
- Awareness of changing capacity and ability to use adaptive strategies to compensate; or
- A tendency to become less flexible

More Serious Decline

- Decreasing accuracy, often along with slowing;
- Memory decline that is noticeable by others;
- Difficulty with learning new things in general;
- Forgetting how to do familiar activities, use appliances or electronics, etc.;
- Lack of insight into changes and the impact they are having on yourself and others; or
- Changes in personality

Why is all this significant? For several years, OBA leaders have been concerned that Oklahoma attorneys have been headed for a severe drop in population (the cliff) as a result of the baby boomer generation aging out. The number of older attorneys still practicing has also been a topic of discussion. By my rough analysis, the mean age of active members in good standing is 55.

At the 2025 Judicial Conference, recently held contemporaneously with the very successful OBA Solo & Small Firm Conference, I was honored to report to Oklahoma's judges on the "State of the OBA." One of the observations I provided was that, according to OBA records as of Jan. 1, 2025, more of our active members in good standing are *over the age of 80 than under the age of 30*. Let that sink in for a moment, and it becomes obvious that Oklahoma is not replacing our aging active members with new members.

This is not a new topic. In 2014, then-OBA President Renee DeMoss initiated the OBA Attorney Contingency Plans and Transitions

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Bar News in a Minute

MEET THE NEW OBA MANAGEMENT ASSISTANCE PROGRAM DIRECTOR, JULIE BAYS

The Oklahoma Bar Association welcomes Julie Bays into her new role as director of the OBA Management Assistance Program. Ms. Bays was recently promoted to this position, succeeding longtime MAP Director Jim Calloway, who retired in May.

Ms. Bays said, "As someone who's always been passionate about using technology to solve problems, I'm excited to modernize the OBA Management Assistance Program and make it easier for our members to find the tools and guidance they need to manage their practices with confidence."

Ms. Bays has served as the OBA's practice management advisor since November 2018, providing assistance and counsel to attorneys using technology and other tools to manage their offices efficiently. She plays a key role in planning the OBA Solo & Small Firm Conference. She is also involved with the OBA's access to justice initiatives, such as Oklahoma Free Legal Answers. She was co-chair of the Planning Board for ABA TECHSHOW 2025 and continues to serve as a board member for TECHSHOW 2026.

Prior to joining the OBA, she served in the Office of the Oklahoma Attorney General beginning in 2002, where she was responsible for prosecuting antitrust and consumer protection cases. She was appointed chief assistant attorney general of the Consumer Protection Unit in 2013. In this role, she traveled the state to educate consumers about identity theft and other types of consumer and internet fraud.

REGISTRATION IS OPEN FOR THE 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, who will present Operation Lady Justice. Register now at www.okbar.org/wil. Learn more about this year's conference on page 70 of this issue.

SAVE THE DATE FOR THE OBA ANNUAL MEETING

The 2025 OBA Annual Meeting will be held Nov. 6-7 at the Sheraton Oklahoma City Downtown Hotel. During this year's meeting, bar business will be conducted, and the annual OBA Awards will be presented. Read more information about this year's meeting on page 61 of this issue.

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.

ERIN JONES-SLATEV APPOINTED SPECIAL JUDGE IN CANADIAN COUNTY

Erin Jones-Slatev has been appointed as a new Canadian County special judge. The selection process began in late May, following the addition of a new special judge position in Canadian County created by the Oklahoma Legislature in response to the county's population growth and increasing number of case filings.

Ms. Jones-Slatev has served as a court referee in the juvenile division of the Canadian County District Court since 2019. During her tenure, she presided over the family treatment court program and was responsible for both delinquent and deprived child cases. She also held supervisory and administrative responsibilities at the Juvenile Justice Center, overseeing a variety of court-related programs.

Before her appointment as a referee, she practiced law in El Reno for nearly a decade and in Kansas for four years. Her legal background includes civil litigation, family law, juvenile law and service as a municipal prosecutor.

She is a fifth-generation attorney, and she will be following in her father's footsteps, who served as a district judge in the western part of the state from 1988 to 1995. She is married, and the couple has two school-aged children.

LHL DISCUSSION GROUP HOSTS OCTOBER MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Oct. 2 in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Oct. 9 in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet Oct. 23 at the first-floor conference room of the Oil Center, 2601 NW Expressway.

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

LAUNCHING YOUR LAW PRACTICE

On Tuesday, Oct. 21, join the OBA Management Assistance Program for Launching Your Law Practice: A Hands-On Workshop. This is a no-cost, semiannual event for new lawyers, those returning to private practice or those venturing out on their own. This day-long workshop will address resources for designing a client-centered firm, improving workflows using AI, business planning and more. Learn more at www.okbar.org/oylp.

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.

Beyond the Injury: Identifying Employment Cases in Personal Injury and Workers' Compensation Law

By Patricia A. Podolec

EMPLOYMENT LAW ENCOMPASSES THE LEGAL FRAMEWORK governing the relationship between employers and employees. It covers a wide range of issues, including hiring, workplace conditions, compensation and termination. For non-employment law attorneys, understanding the basics of employment law is crucial, as these issues often intersect with other areas of legal practice. Whether advising a business client or representing an individual, a foundational knowledge of employment law can help you identify potential legal issues and guide clients effectively. This article is not intended to be a comprehensive primer on employment law but rather an overview of potential employment cases that non-employment lawyers may encounter. If you have an employee who was discharged, please reach out to an employment lawyer. The Oklahoma Employment Lawyers Association has a list of attorneys who practice plaintiff's employment law (www.oela.org), as does the National Employment Lawyers Association (www.nela.org).

To begin, one overriding issue for clients with potential wrongful termination cases is that employees in Oklahoma, just as most employees in the United States, are employed at will.[1] This means that an employer can fire an employee for a good reason, a bad reason, no reason and, as the Oklahoma Supreme Court states, even a morally wrong reason.[2] An employer cannot, however, fire an employee for an illegal reason.

There are exceptions to employment-at-will. Oklahoma recognizes a wrongful termination action as a violation of an Oklahoma public policy. An employer cannot terminate an employee for a reason that is against "a clear mandate of public policy articulated by constitutional, statutory, or decisional law."[3] This is commonly referred to as a *Burk* tort.[4] This means that general bullying, termination or other adverse treatment not based on a protected characteristic or a violation of Oklahoma public policy is not unlawful, and no cause of action against the employer is available.[5] Put simply, an employer cannot fire an employee for an illegal reason, such as a violation of employment laws, including the Americans with Disabilities Act and the Oklahoma Administrative Workers' Compensation Act.

In short, many attorneys who practice in the areas of personal

injury or workers' compensation have clients who have been terminated or retaliated against because of their injuries. These clients may have a cause of action under the Americans with Disabilities Act, the workers' compensation statutes or both.

THE AMERICANS WITH DISABILITIES ACT, AS AMENDED

The Americans with Disabilities Act (ADA) serves as a crucial legal framework designed to protect individuals with disabilities from discrimination in the workplace. Under Title I of the ADA, employers are prohibited from treating qualified employees or job applicants unfavorably due to their disabilities. This protection extends to all facets of employment, including but not limited to hiring, termination, compensation, job assignments, promotions, layoffs, training, fringe benefits and other employment terms or conditions.[6]

The ADA emphasizes a broad interpretation of what constitutes a disability, ensuring comprehensive coverage. An individual is deemed to have a disability if they possess a physical or mental condition that significantly restricts a major life activity, have a history of such a condition or experience negative employment actions due to a perceived or actual impairment, provided that it is not transitory and minor. Importantly, a medical condition does not need to be long term, permanent or severe to be considered substantially limiting. The primary focus is on the limitation of symptoms when they are active.[7]

Under the ADA, employers must make a "reasonable accommodation" for an employee's disability to allow the employee to perform the "essential functions" of their position. Employers are required to enter into an "interactive discussion" with an employee who is asking for a reasonable accommodation, unless the employer can show "undue hardship." This begins with the employee requesting a reasonable accommodation, which then "triggers the employer's responsibility to engage in the interactive process where both parties must communicate in good-faith."[8]

What Is a 'Reasonable Accommodation'?

The ADA requires covered employers to provide reasonable accommodations to disabled employees. These accommodations enable employees to perform the essential functions of their jobs. This definition encompasses modifications or adjustments to the work environment or the manner in which a job is customarily performed. The ADA defines "reasonable accommodation" to include job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; and other similar accommodations for individuals with disabilities.[9] The term relates to those accommodations that enable the employee to perform the essential functions of their job.[10]

An accommodation must be reasonable. The 10th Circuit does not recognize indefinite

IDENTIFYING AN EMPLOYMENT LAW CASE

My first step is to determine if the employee was fired for an illegal reason, which would override the employment-at-will doctrine. I ask the employee what the employer said was the reason for the adverse action and then ask what they thought the "real reason" was. Often, an employee says something along the lines of "my boss just didn't like me." So I then dig deeper as to why the employer did not like the employee. Was it because of a protected characteristic, such as a disability? Or was it because the employee questioned internal policies or procedures? If so, this is probably not a violation of the law.

Moreover, some employers do not appreciate the difference in the requirements under the AWCA and the requirements under the ADA and fail to fully explore the accommodations required by the ADA. For example, I still observe employers telling employees that they can apply for alternate positions rather than placing them in that position. I also still see employers that maintain that marginal duties are essential and that no accommodations are available. For attorneys who represent injured employees, it is crucial to become informed about these laws, as there are time limits to pursuing disability-related causes of action, and ensure clients do their part in the "interactive process" to determine what reasonable accommodations are available.

leave, however, as a reasonable accommodation.[11] Further, if it is an "undue hardship" for the employer, it is not considered a reasonable accommodation. The statute defines undue hardship as "an action requiring significant difficulty or expense," considering several factors, such as the nature and cost of the accommodation, the overall financial resources of the facility, the number of persons employed and the impact on the operation of the facility.[12] The 10th Circuit has emphasized that the hardship must be real rather than speculative, and the employer is on stronger ground when it has attempted various methods of accommodation and can point to actual hardships that resulted.[13]

What Is an 'Essential Function'?

Under the ADA, only essential functions must be accommodated. If the function is not essential, no accommodation is necessary. First, an employee must be qualified for the position. To be qualified, an employee must be able to perform the essential functions of their job, or the job desired, with or without accommodations.[14] The definition of an "essential function" under the ADA is primarily derived from the regulations and case law interpreting the statute. The term "essential functions" is defined as "the fundamental job duties of the employment position the individual with a disability holds or desires."[15] This definition explicitly excludes marginal functions of the position.[16]

The determination of whether a particular job function is essential involves a factual inquiry that considers several factors. These factors include but are not necessarily limited to: 1) the employer's judgment as to which functions are essential,[17] 2) written job descriptions prepared before advertising or interviewing applicants for the job,[18] 3) the amount of time spent on the job performing the function,[19] 4) the consequences of not requiring the incumbent to perform the function,[20] 5) the work experience of past incumbents in the job[21] and 6) the current work experience of incumbents in similar jobs.[22]

Courts evaluate an employer's identification of essential functions under the ADA by giving considerable weight to the employer's judgment, especially when supported by a written job description.[23] However, this deference is not absolute, and courts may question or reject an employer's determination if it appears to be inconsistent with business necessity or if the function is deemed marginal rather than essential.[24] The 10th Circuit places considerable weight on the employer's judgment concerning what functions are essential, provided that the employer's description is job-related, uniformly enforced and consistent with business necessity.[25] Courts are generally reluctant to second-guess the employer's business judgments in defining essential functions.[26] However, this deference is not limitless, as an employer cannot arbitrarily designate every condition of employment as an essential function, and courts may question or reject an employer's determination if it appears to be inconsistent with business necessity or if the function is deemed marginal rather than essential.[27]

In summary, the definition of an "essential function" under the ADA in the 10th Circuit is the fundamental job duties of the employment position the individual with a disability holds or desires, excluding marginal functions. The determination involves a factual inquiry considering the employer's judgment, written job descriptions, time spent on the function, consequences of not performing the function and the work experience of incumbents. Courts generally defer to the employer's judgment, provided it is job-related, uniformly enforced and consistent with business necessity.[28]

What Is an 'Interactive Discussion'?

The interactive process required to determine a reasonable accommodation under the ADA involves a collaborative effort between the employer and the employee. The 10th Circuit has consistently emphasized that this process necessitates good faith communications from both parties to identify the employee's limitations and explore potential accommodations, as each side possesses different information critical to determining whether there is a reasonable accommodation that might permit the disabled employee to perform the essential functions of their job.[29] The employer's obligation to engage in this process is triggered when the employee provides notice of their disability and any resulting limitations.[30]

As noted, both the employer and the employee must participate in this interactive discussion. The employer has an affirmative obligation to undertake a good faith back-and-forth process with the employee, aiming to identify the employee's precise limitations and attempting to find a reasonable accommodation for those limitations.[31] This duty includes meeting with the employee, requesting information about the employee's

Discriminating and/or retaliating against an employee for a claim under the Oklahoma Administrative Workers' Compensation Act (AWCA) is against the law.

condition and limitations, indicating to the employee that the employer is considering the request and offering and discussing reasonable alternatives.[32] The employee also has a duty to engage reasonably in the interactive process. This includes providing necessary medical information and clarifying the scope of their accommodation needs.[33] Failure to provide such information precludes the employee from claiming the employer violated the ADA by failing to provide reasonable accommodation.[34]

In short, the interactive process under the ADA requires both the employer and employee to engage in good faith communications to identify the employee's limitations and explore potential accommodations. The process is triggered by the employee's notice of their disability, and both parties must participate actively to fulfill their respective obligations. Failure to engage in this process can have significant legal consequences, particularly in summary judgment proceedings.

RETALIATION AND DISCRIMINATION UNDER THE OKLAHOMA ADMINISTRATIVE WORKERS' COMPENSATION ACT

So how does the ADA relate to or impact Oklahoma's workers' compensation statutes? Discriminating and/or retaliating against an employee for a claim under the Oklahoma Administrative Workers' Compensation Act (AWCA) is against the law. Essentially, an employer cannot retaliate against an employee when the employee has, in good faith, 1) filed a claim, 2) retained an attorney, 3) instituted any proceeding under the act or 4) testified in any proceeding.[35] In addition, an employee cannot be discharged while on temporary total disability for the sole reason of being absent from work.[36]

How Does the ADA Impact the AWCA?

In what way does the ADA come into play in a work-related injury? The AWCA also states, "Notwithstanding any other provision of this section, an employer shall not be required to rehire or retain an employee who, after temporary total disability has been exhausted, is determined by a physician to be physically unable to perform his or her assigned duties or whose position is no longer available."[37] Thus, under the AWCA, an employer can refuse to keep an employee who is unable to perform their assigned duties. Most employees who are represented in a workers' compensation case come out of workers' compensation with some kind of restrictions. This, however, can violate the ADA because it does not consider the reasonable accommodation process provided in the ADA. If an employee has restrictions, as described above, the employer must enter the interactive process to determine if there is a reasonable accommodation available. Under the ADA, with few exceptions, a reasonable accommodation includes transferring an employee to an open position, which is not a promotion, where an employee either needs no accommodations or reasonable accommodations are available. The ADA, however, does not obligate employers to create new positions or reassign disabled employees to nonvacant roles. Employers are not required to promote or find alternative jobs for employees who cannot perform their current job's essential functions.[38]

How Is 'Light Duty' Different From a 'Reasonable Accommodation'?

Under the AWCA, an employer can provide an employee who cannot perform their regular job a "light duty" position.[39] Light duty generally refers to tasks an injured employee can perform, despite physical restrictions resulting from a work-related injury. The availability and offer of light duty can impact the employee's eligibility for temporary total disability (TTD) benefits.[40] Under the ADA, a "light duty" position may not be considered a reasonable accommodation, as it is a job that was created specifically for workers' compensation injuries. An employer is not required to create a job for an employee as an accommodation.[41] The employee can also be placed on TTD for a period of time that would not be considered a reasonable accommodation under the ADA.[42] After the employee reaches maximum medical improvement under the AWCA[43] and receives a disability rating, some employers will not return the employee to work with restrictions, as given in their workers' compensation case. While this may be allowed under the workers' compensation statutes, it is not allowed under the ADA without the required "interactive discussion."

Furthermore, the 10th Circuit case law specifies a reasonable accommodation to include transferring the employee to an open position that is not a promotion.[44] With few exceptions, such as a bona fide seniority system or a union contract,[45] it is the employer's duty to find the employee an open position and transfer the employee to it without the necessity for the employee to apply for the position.[46] Some employers may tell employees they should search for open positions and apply for them, and it is up to the hiring official whether they get the job.[47] Except for the limited exceptions noted above, it is my opinion that this policy violates the ADA.

THE OKLAHOMA ANTI-DISCRIMINATION ACT

Oklahoma basically recognizes the same types of discrimination recognized in federal law.[48] While the ADA only covers employers with at least 15 employees,[49] the Oklahoma Anti-Discrimination Act (OADA) covers employers with only one employee.[50] Generally, if the employer has over 15 employees (20 employees for an age discrimination violation), the employee can file either with the Equal Employment Opportunity Commission (EEOC) or the Oklahoma Office of Civil Rights Enforcement (OCRE). Under the OADA, however, the charge must be filed within 180 days.[51] Because the OCRE and the EEOC have a work-sharing agreement, the charge for violation of federal law must be filed within 300 days.[52] If the charge is filed under state law and the employer is an Oklahoma political subdivision, a tort claim under the Oklahoma Governmental Tort Claims Act must be filed.[53]

RELEVANT FILING DEADLINES

As noted previously, an employee has either 180 days to file a charge if the employer has fewer than 15 employees or 300 days if the employer has over that amount, and these administrative filings must be exhausted prior to filing in court. Under both the ADA and the OADA, exhaustion of administrative remedies is required, and the EEOC (or the OCRE) must issue a notice of right to sue before a lawsuit can be filed.[54] However, another statute also regulates disability discrimination in employment – Section 504 of the Rehabilitation Act of 1973. This statute covers any employer that receives federal funds, no matter how many employees the employer has.[55] Section 504 in Oklahoma has a two-year statute of limitations.[56] Further, Section 504 does not require any administrative exhaustion, so employees are not required to file a charge with the EEOC.[57]

Bottom line, employers are required to accommodate employees with disabilities unless they can show undue hardship. Therefore, every employee injured, whether on or off the job, is likely to be covered by at least one of these statutes.

CONCLUSION

Employment law is a complex and dynamic field that intersects with many other areas of legal practice. By understanding the basics, non-employment law attorneys can better serve their clients and identify potential legal issues. However, given the intricacies of employment law, seeking specialized advice when needed is always advisable. This ensures that clients receive the most accurate and effective legal guidance.

ABOUT THE AUTHOR

Patricia A. Podolec practices employment law, representing employees. She is certified as a senior professional in human resources by the Human Resource Certification Institute. Prior to attending law school, Ms. Podolec worked in human resources. She is also a member of the Federal

Bar Association, the American Bar Association, the Oklahoma Employment Lawyers Association and the National Employment Lawyers Association. She graduated *magna cum laude* from the OCU School of Law.

ENDNOTES

1. Virtually every state and Washington, D.C., recognize at-will employment. *See* http://bit.ly/41wlxpy (last visited May 8, 2025).

2. "Such indefinite employment contracts are deemed terminable-at-will. The classic statement of the at-will rule was that an employer may discharge an employee for good cause, for no cause or even for cause morally wrong, without being thereby guilty of legal wrong." *Burk v. K-Mart Corp.*, 1989 OK 22, ¶5, 770 P.2d 24, 26.

3. *Gilmore v. Enogex, Inc.*, 1994 OK 76, ¶6, 878 P.2d 360, 362-63 ("Employers can discharge at-will employees without recourse, in good or bad faith, with or without cause. There is no implied covenant of good faith and fair dealing that protects an at-will employment relationship from termination. At-will employees do not have a cognizable cause of action for wrongful discharge unless the claim falls within the narrow class of complaints in which the discharge is *contrary to a clear mandate of public policy* articulated by constitutional, statutory or decisional law.").

4. A *Burk* tort does not protect an employee from the employer's "poor business judgment, or corporate foolishness." *Shero v. Grand Savings Bank,* 2007 OK 24, ¶12, 161 P.3d 298, 302.

5. *Hayes v. Eateries, Inc.*, 1995 OK 108, ¶32, 905 P.2d 778, 789-90 (No public policy *Burk* tort claim is stated "where an employee claims his discharge was motivated by his reporting either externally (to appropriate law enforcement officials) or internally (to appropriate company officials), criminal conduct of a co-employee perpetrated against the interest of the employer"; *McKenzie v. Renberg's Inc.*, 94 F.3d 1478, 1481 (10th Cir. 1996) ("We hold that McKenzie did not engage in protected activity under §215(a)(3) when, in her capacity as personnel director, she undertook to advise Renberg's that its wage and hour policies were in violation of the FLSA."); *Shero*, 2007 OK 24, ¶13, 161 P.3d at 303 ("Employer/Bank did not violate public policy when it conditioned Employee's employment upon Employee's abandonment of his counterclaim pursuant to the Open Records Act, 51 O.S.2001, §24A.1*,* against the Employer/Bank's customer.").

6. "Disability Discrimination and Employment Decisions," U.S. Equal Employment Opportunity Commission. http://bit.ly/4ouyDxt (last visited May 26, 2025).

7. *Id.*

8. *Dansie v. Union Pacific Railroad Co.,* 42 F.4th 1184, 1193 (10th Cir. 2022).

9. *Lincoln*, 900 F.3d at 1204-05 (2018) ("The ADA defines "reasonable accommodation" to "include ... job restructuring, part-time or modified work schedules, *reassignment to a vacant position*, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, ... and other similar accommodations for individuals with disabilities." 42 U.S.C. §12111(9) (emphasis added)).

10. *Id.* ("This is because a reasonable accommodation 'refers to those accommodations which presently, or in the near future, enable the employee to perform the essential functions of his job.'") (emphasis removed).

11. *Herrmann v. Salt Lake City Corp.*, 21 F.4th 666, 676 (10th Cir. 2021) ("But a request for indefinite leave is not reasonable as a matter of law.").

12. 42 U.S.C.A. §12111(10); *see also Smith v. Midland Brake, Inc., a Div. of Echlin, Inc.*, 180 F.3d 1154 (10th Cir. 1999); *Aubrey v. Koppes*, 975 F.3d 995 (10th Cir. 2020).

13. *Equal Employment Opportunity Comm'n v. JBS USA, LLC*, 115 F. Supp. 3d 1203, 1232 (D. Colo. 2015).

14. 42 U.S.C.A. §12111.

15. *Burnett v. Pizza Hut of Am., Inc.*, 92 F. Supp. 2d 1142 (D. Kan. 2000).

16. 29 C.F.R. §1630.2.

17. *Hinson v. U.S.D. No. 500*, 187 F.Supp.2d 1297, 1304 (2002); *Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1192 (10th Cir. 2018).

18. *Lincoln*, 900 F.3d at 1192; *Mason v. Avaya Commc'ns, Inc.*, 357 F.3d 1 at 1119 (10th Cir. 2004).

19. *Mason*, 357 at 1119; *Mathews v. Denver Post*, 263 F.3d 1164, 1167 (10th Cir. 2001).

20. *Id.*

21. *Hinson*, 187 F. Supp. 2d at 1305; *Mason*, *supra* note 20.

22. *Hinson*, *supra* note 23.

23. *Unrein v. PHC-Fort Morgan, Inc.*, 993 F.3d 873, 877 (10th Cir. 2021) ("Indeed, '[w]e will not second guess the employer's judgment when its description is job-related, uniformly enforced, and consistent with business necessity.'") *Mason*, *supra* note 20.

24. The deference provided to employers regarding what functions are essential, however, is not limitless, as "an employer may not turn every condition of employment which it elects to adopt into a job function, let alone an essential job function." *Hawkins*, 778 F.3d at 889 (quotation marks omitted); *see* 29 C.F.R. §1630.2(n)(1) ("The term 'essential functions' does not include the marginal functions of the position."). *Lincoln*, 900 F.3d at 1192 (10th Cir. 2018).

25. *Id., supra* note 26; *Mannan v. Colorado*, 841 Fed. Appx. 61, 66-67 (10th Cir. 2020).

26. *Mason*, *supra* note 20 at 1122 ("In cases arising under the ADA, we do not sit as a 'super personnel department' that second guesses employers' business judgments.").

27. *Lincoln*, 900 F.3d at 1192 ("The deference provided to employers regarding what functions are essential, however, is not limitless, as 'an employer may not turn every condition of employment which it elects to adopt into a job function, let alone an essential job function.'").

28. *Mason*, *supra* note 20 at 1119.

29. *Norwood v. United Parcel Serv., Inc.*, 19-2496-DDC-JPO, 2021 WL 3022315, at *11 (D. Kan. July 16, 2021), *aff'd, Norwood v. United Parcel Serv., Inc.*, 57 F.4th 779 (10th Cir. 2023); *Aubrey v. Koppes*, 975 F.3d 995, 1007 (10th Cir. 2020).

30. *Dansie*, 42 F.4th at 1193; *Norwood*, 57 F.4th at 786 (10th Cir. 2023).

31. *Id.*

32. *Williams v. Prison Health Servs., Inc.*, 159 F. Supp. 2d 1301, 1310 (D. Kan. 2001), *aff'd, Williams v. Prison Health Servs., Inc.*, 35 Fed. Appx. 774 (10th Cir. 2002).

33. *Norwood*, *supra* note 31 at *20, ("Courts have repeatedly ruled in favor of employers in ADA claims where the employee failed to participate in good faith during the interactive process.").

34. *Hurt v. Sch. Dist. No. 1 in Cnty. of Denver Colorado*, 664 F. Supp. 3d 1227, 1240 (D. Colo. 2023), *appeal dismissed sub nom. Hurt v. Sch. Dist. No. 1 in Cnty. of Denver*, 23-1136, 2023 WL 7215340 (10th Cir. June 1, 2023).

35. 85A O.S. §7.

36. *Id.*

37. *Id.*

38. *Smith v. Midland Brake, Inc., a Div. of Echlin, Inc.*, 180 F.3d 1154 (10th Cir. 1999).

39. 85A O.S. §45.

40. *Williams v. Hormel Foods Corp.*, 2003 OK CIV APP 37, 67 P.3d 375.

41. *Smith, supra* note 40.

42. *Herrmann*, *supra* note 13 at 676 ("But a request for indefinite leave is not reasonable as a matter of law.").

43. 85A O.S. §2(28) ("'Maximum medical improvement' means that no further material improvement would reasonably be expected from medical treatment or the passage of time.").

44. *Smith, supra* note 40.

45. *US Airways, Inc. v. Barnett*, 535 U.S. 391, 122 S. Ct. 1516, 152 L. Ed. 2d 589 (2002).

46. *Smith, supra* note 40.

47. *Lincoln*, 900 F.3d at 1205 ("Under BNSF's logic, every employer could adopt a policy in favor of hiring the most qualified candidate such that a disabled employee could never rely on reassignment to establish the existence of a reasonable accommodation for purposes of his prima facie case. Such a result would effectively and improperly read 'reassignment to a vacant position' out of the ADA's definition of 'reasonable accommodation.'").

48. 25 O.S. §1350.

49. 42 U.S.C.A. §12111(5)(A).

50. 25 O.S. §1301(1).

51. 25 O.S. §1350(B).

52. *E.E.O.C. v. Commercial Office Products Co.,* 486 U.S. 107, 108 S. Ct. 1666, 100 L. Ed. 2d 96 (1988).

53. *Conner v. State*, 2025 OK 12.

54. 29 C.F.R. §1601.28.

55. *Schrader v. Fred A. Ray, M.D., P.C.*, 296 F.3d 968, 969 (10th Cir. 2002) ("Employers with fewer than fifteen employees are subject to the Rehabilitation Act's requirements so long as they are recipients of federal assistance.").

56. *Levy v. Kansas Dep't of Soc. & Rehab. Servs.*, 789 F.3d 1164, 1172 (10th Cir. 2015) ("Because a section 504 claim is closely analogous to section 1983, we find that section 504 claims are best characterized as claims for personal injuries."). While this case is based on Kansas law, Oklahoma's personal injury statute is also two years. *See* 12 O.S. §95.

57. *Edmonds-Radford v. Sw. Airlines Co.*, 17 F.4th 975, 986 (10th Cir. 2021) ("The applicability of the Rehabilitation Act is significant here because it, unlike the ADA, does not require the exhaustion of administrative remedies.").

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The Punitive Paradox: Scope of Employment, Punitive Damages and the Oklahoma Governmental Tort Claims Act

By Pete G. Serrata III

In Oklahoma, an employer can be held vicariously liable for the tortious acts committed by its employee if the act is "fairly and naturally incident to the business" and is done "while the servant was engaged upon the master's business ... although mistakenly or ill advisedly ... or from some impulse of emotion which naturally grew out of or was incident to the attempt to perform the master's business."[1] On this issue, the Oklahoma Supreme Court has made it clear that vicarious liability can be imposed even if the employee's actions are found to "evince a wanton or reckless disregard for the rights of another, oppression, fraud or malice" for the purposes of awarding punitive damages.[2]

The passage of the Political Subdivision Tort Claims Act in 1978, the predecessor to the Oklahoma Governmental Tort Claims Act (the GTCA or collectively "the act"), established a legislative framework for recognizing and limiting sovereign immunity in Oklahoma. The GTCA limits the imposition of vicarious liability on governmental entities to acts committed by public employees that are within the "scope of employment" as defined by the act.[3]

The effect of the GTCA is twofold: First, the act defines the full extent of the state's waiver of sovereign immunity when it comes to claims for tort damages, whether the claims arise from common law, statute or constitutional violations.[4] Second, the GTCA abrogates the common law and limits vicarious liability to actions performed by an employee "acting in good faith within the duties of the employee's office or employment."[5] Thus, the question arises whether a jury can find that a public employee was acting within the "scope of employment" and still award punitive damages based on a finding that the employee's conduct was in "reckless disregard" or "malicious."

Like all good law school professors, the Oklahoma Supreme Court has answered this question with the truism, "It depends." The Oklahoma Supreme Court's seminal case on the issue, *DeCorte v. Robinson*, builds upon prior

Oklahoma case law and draws from the Florida Supreme Court.[6] The decisional framework presented in *DeCorte* and its underpinnings illustrate how and when a jury can find that a public employee acted within the "scope of employment" and award punitive damages for the same conduct.

SOVEREIGN IMMUNITY

The doctrine of sovereign immunity was first recognized in early English law and established that the sovereign could not be sued without his permission. Although there is some debate as to whether the doctrine is based upon the theory that "the king can do no wrong," the doctrine is believed to have more likely resulted from the practicality that the courts were an extension of the realm and could not be used to enforce claims against it.[7]

Federal Sovereign Immunity

When the Constitution was ratified, the crown could not be sued in its own courts without its consent.[8] The ratification of the U.S. Constitution included significant assurances by such figures as Alexander Hamilton, James Madison and John Marshall that the doctrine of sovereign immunity would not be thrown out with the British.[9] Before long, however, a growing chorus of dissent began to gnaw at the edges of the sovereign's immunity.[10]

Writing for the court in *U.S. v. Lee*, Justice Samuel Miller expressed the court's misgivings when he wrote:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.[11]

Although the court did not disturb the immunity provided to the government, it declined to extend that immunity to individual officers of the United States acting on its behalf.[12] Rejecting the argument that sovereign immunity

precluded judicial scrutiny over federal officers, the court in *Lee* held:

> It is not pretended, as the case now stands, that the president had any lawful authority to do this, or that the legislative body could give him any such authority except upon payment of just compensation. The defense stands here solely upon the absolute immunity from judicial inquiry of everyone who *asserts* authority from the executive branch of the government, however clear it may be made that the executive possessed no such power.[13]

Thus, by 1882, the power of absolute sovereign immunity began to retreat as the judicial branch assumed the role of guarding individual rights from the abuse of power by its coequal branches of government.

In 1946, Congress passed the Federal Tort Claims Act, which statutorily allowed the United States to be sued in the district courts and waived its governmental immunity "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment."[14] Thus began the genesis of the modern tort claims acts among the states.

Sovereign Immunity in Oklahoma

In 1978, the Oklahoma Legislature enacted the Political Subdivision Tort Claims Act (codified at Okla. Stat. Tit. 51 §151, *et seq.*), extending political subdivision tort liability for loss resulting from its torts or the torts of its employees acting within the scope of their employment or duties, subject to the limitations specified in the act. At that time, the doctrine of sovereign immunity in Oklahoma was no longer premised upon absolute immunity from suit but rather stemmed from the dichotomy of the state as either sovereign or proprietor.[15]

In *Hershel v. University Hospital Foundation*, the Oklahoma Supreme Court limited common law immunity to functions of the state that were inherently governmental rather than merely proprietary.[16] Under this view, the state and its political subdivisions enjoyed immunity when acting in a legislative or judicial/quasi-judicial capacity. However, in *Vanderpool v. State*, the Oklahoma Supreme Court would hold that the state could be sued without regard to whether the Legislature had given such consent, express or implied.[17] In the court's opinion, the role of sovereign immunity began to wither upon the "re-examination of the soundness of the concept ... in the light of the expanded role of government in today's society ... [resulting in] a retreat from the concept both legislatively and by case law."[18]

Following *Vanderpool*, the Legislature enacted the GTCA, abrogated common law sovereign immunity once and for all and replaced it with statute.[19] Although the GTCA codified the doctrine of sovereign immunity in Oklahoma, it simultaneously waived that immunity for a wide swath of tort claims. Thus, the state and its political subdivisions are statutorily immune from tort claims unless the Legislature has expressly waived that immunity.[20]

The GTCA distinguishes between a government employee acting within the 'scope of employment' and one who was not to determine whether sovereign immunity attaches.[23]

Scope of Employment

The GTCA serves as a waiver of immunity in certain instances.[21] Specifically, the act provides that the state or political subdivision "shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment."[22] The GTCA distinguishes between a government employee acting within the "scope of employment" and one who was not to determine whether sovereign immunity attaches.[23]

"Scope of employment" is defined by the GTCA as "performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by competent authority."[24] The Oklahoma

Supreme Court has held that an act of the employee falls outside the scope if the actions are malicious or in bad faith.[25] The decision itself is a matter for the jury unless only one reasonable inference can be drawn from the allegations.[26]

Under the GTCA, a "suit against a government officer in his or her official capacity is actually a suit against the entity that the officer represents and is an attempt to impose liability upon the governmental entity."[27] If the employee is acting within the scope of employment, it is the government entity that may be sued, not the individual.[28] In pursuit of the aims of the GTCA, "an employee of a political subdivision is relieved from private liability for tortious conduct committed within the scope of employment."[29]

Critically, however, "such protection does not render such employees immune from liability for willful and wanton negligence or other conduct which places the employees outside the scope of their employment."[30] As a result, claims alleging the excessive use of force or other constitutional deprivations at the hands of law enforcement often result in a tug of war between the officer, the employing agency and the plaintiff as to whether the conduct falls within the "scope of employment."

PUNITIVE DAMAGES: OKLA. STAT. TIT. 23 §9

The purpose of punitive damages is to punish and deter bad conduct. Proof of actual or presumed malice, oppression, fraud or wanton or reckless disregard for another's rights must be determined by the trial court before the jury can be instructed on punitive damages.[31] In such cases, the jury will first be asked to determine whether the defendant's conduct was within the "scope of employment." If supported by evidence, the trial court may instruct the jury using instruction 5.6 of the Oklahoma Uniform Jury Instructions, which provides:

EXEMPLARY OR PUNITIVE DAMAGES – FIRST STAGE

> If you find in favor of [Plaintiff], and grant [him/her] actual damages, then you must also find by a separate verdict, whether [Defendant] (acted in reckless disregard of the rights of others) (and/or) (acted intentionally and with malice towards others).
>
> [Plaintiff] has the burden of proving this by clear and convincing evidence … .
>
> [The conduct of [Defendant] was in reckless disregard of another's rights if [Defendant] was either aware, or did not care, that there was a substantial and unnecessary risk that [his/her/its] conduct would cause serious injury to others. In order for the conduct to be in reckless disregard of another's rights, it must have been unreasonable under the circumstances, and also there must have been a high probability that the conduct would cause serious harm to another person.]
>
> [Malice involves either hatred, spite, or ill-will, or else the doing of a wrongful act intentionally without just cause or excuse.]

Critically, the instructions given to jurors do not tie the concepts of "scope of employment" and punitive damages in any way. The instructions are merely presented seriatim. Given the stakes at issue between the plaintiff, the officer and the employing agency, the natural question arises whether findings by the jury that the officer's conduct was within the "scope of employment" can coexist with a finding of reckless indifference or malice.

DECORTE'S DILEMMA

Off-duty police officer Gary Robinson was driving in his private car with his wife in Tulsa.[32] Officer Robinson saw a car that he considered to be driving dangerously and pursued it, reaching speeds of up to 85 mph. Officer Robinson contacted the police department dispatcher by cell phone. The only instruction he received was to stay on the phone. The driver, Mr. DeCorte, realized he was being pursued and stopped his car in a parking lot.[33]

Although Officer Robinson was informed that an on-duty police officer was en route, he exited his car and approached Mr. DeCorte's vehicle. Officer Robinson identified himself as an off-duty police officer, drew a handgun, pointed it at Mr. DeCorte and reached into the car to get the key. Mr. DeCorte was either then pulled from or exited the car on his own. After Mr. DeCorte was out of his car, Officer Robinson attempted to subdue him with a "carotid chokehold."[34] When the on-duty officer arrived, he and Officer Robinson subdued and handcuffed Mr. DeCorte. Mr. DeCorte was placed under arrest and was put in the back of the on-duty officer's patrol car.

Mr. DeCorte testified that Officer Robinson then struck him and grabbed him by the throat while he was handcuffed

and seated in the back seat of the police car. Mr. DeCorte's breath test did not reach the statutory level of intoxication. All charges against him were dropped. During the incident, Mr. DeCorte suffered a herniated disk in his neck, which required surgery.

Mr. DeCorte sued the city of Broken Arrow and Officer Robinson, alleging civil rights violations and other claims. The jury returned a verdict in favor of Mr. DeCorte for $30,000 against the city. The jury also returned a verdict in favor of Mr. DeCorte against Officer Robinson for actual and punitive damages. By special finding, the jury found that Officer Robinson had been acting under the "scope of employment." The city appealed, arguing that the jury's finding of punitive damages excluded the possibility that Officer Robinson could have been acting within the scope of his employment. The Oklahoma Court of Civil Appeals reversed the judgment, reasoning that the verdict was internally inconsistent and finding that Officer Robinson could not have been acting within the scope of his employment while, at the same time, acting in such a wanton manner as to warrant punitive damages.[35] The Oklahoma Supreme Court disagreed, but its decision appears to be a compromise of two competing theories stemming from Oklahoma and Florida case law.

Oklahoma's Precedent

The argument in *DeCorte* was not a matter of first impression per se, though it was one that had not previously been fully settled by the Oklahoma Supreme Court. The court first confronted the issue in *Holman v. Wheeler*, 1983 OK 72. The guardian of a 10-year-old student brought suit against a school superintendent who allegedly spanked the student with excessive force while administering school discipline.[36] The plaintiff alleged that he was involved in a minor scuffle with another student. After both students were disciplined by their classroom teacher, the defendant superintendent entered the school in an intoxicated state and proceeded to spank the plaintiff in a violent fit of "intoxicated rage."[37]

Critically, the plaintiff alleged that the superintendent was acting outside the scope of employment and did *not* name the school district as a defendant, effectively sidestepping the GTCA. The superintendent argued that he was authorized to administer such discipline, pursuant to 70 O.S. 1981 §6-114, and was thus immunized from liability under the act, with which the plaintiff had failed to provide the notice required.[38] The Oklahoma Supreme Court disagreed, finding for the plaintiff on the basis that when the conduct of a public employee is willful and wanton, that conduct is beyond the scope of employment and, thus, not covered by the act.[39]

The court's next foray into this question would go beyond the "scope of employment" issue resolved in *Holman*, and it would be the court's first major discussion of whether a finding of "scope of employment" and the award of punitive damages could coexist. Plaintiff Mr. Parker ran a nightclub in Midwest City. Officer Strong was employed by the Midwest City Police Department.[40] The two men knew each other and apparently shared a mutual dislike of one another. On a spring evening in 1986, Officer Strong stopped Mr. Parker in his automobile, ticketed him for speeding and driving without a valid license and charged him with driving under the influence of alcohol.[41] Mr. Parker was acquitted of the DUI charge. He sued, alleging malicious prosecution and naming Midwest City, Officer Strong and the chief of police as defendants.[42]

Noting that "if an employee acts outside the scope of employment, the political subdivision is immune from liability" under the GTCA, the court focused on whether a claim of "malice" necessarily precludes a finding of "good faith." The Supreme Court held that because a malicious prosecution action includes the element of malice, conduct supporting such a claim could not be within the "scope of employment" as a matter of law.[43]

Although the Oklahoma Supreme Court's decisions in *Holman* and *Parker* suggested a clear dividing line between scope of employment and willful and wanton conduct, that clarity was not long-lived. In May 1991, Kiley Nail was a 15-year-old high school student who lied to his parents to attend a prom party at a local motel, where he became extremely intoxicated.[44] When Mr. Nail began to fall in and out of consciousness, some students drove him to the home of a friend's grandmother, where Mr. Nail mistakenly wandered onto the enclosed porch of a nearby neighbor, who called the police.[45] When the responding officer arrived, Mr. Nail was arrested, handcuffed and taken to the police station.[46] Although Mr. Nail had trouble walking unassisted, he offered no resistance to the officer. Upon arrival at the police station, the officer said, "I'm tired of your s---," and allegedly shoved Mr. Nail, causing him to fall on the gravel/

asphalt surface, breaking his nose and cutting his face.[47]

Mr. Nail filed suit against the city, alleging that the officer, either intentionally and maliciously or negligently, injured him by using excessive force. The city responded by filing a motion for summary judgment, arguing that the officer's actions were not within the scope of employment.[48] The trial court entered summary judgment against the city on the issue of liability, and the jury returned a verdict in favor of Mr. Nail in the amount of $100,000.[49] The Court of Appeals reversed and remanded the judgment on the basis that the officer was acting outside the scope of his employment when he injured Mr. Nail.[50]

The Oklahoma Supreme Court disagreed, finding that "the officer was acting within the scope of his employment" at the time he arrested the youth and took him to jail.[51] The court reasoned that based on the record, a jury could find the officer was not necessarily intending to hurt Mr. Nail when he shoved him and that his comments could be construed as a manifestation of disgust, rather than signaling an intention to harm him.[52] The court ruled that while the officer's conduct was clearly unprofessional, the facts themselves are susceptible to more than one rational conclusion, thus leaving the determination of whether the officer was acting within the scope of employment well within the province of the jury.[53]

The Missing Piece

Throughout the decisions in *Holman*, *Parker* and *Nail*, the facts and procedural course of each case meant the Oklahoma Supreme Court had never squarely addressed the issue of whether a *jury* could find that a defendant was both acting within the scope of employment and had also acted with malice or wanton and willful disregard. When this precise issue arose in *DeCorte*, Oklahoma jurisprudence was less than clear, leaving some question as to whether a defendant could start by acting within the scope of employment and then later exceed that scope. Although the *DeCorte* opinion would discuss this theory, the underlying principle would come from the Florida Supreme Court's decision in *McGhee*.

In September 1990, Morris McGhee was arrested by Volusia County Deputy Hernlen.[54] During the booking process, the two exchanged words, and Deputy Hernlen proceeded to grab the handcuffed Mr. McGhee by the throat and kick him with force.[55] Mr. McGhee sued the deputy and the sheriff's department. The trial court dismissed the sheriff's department on the basis that the deputy's actions were outside the scope of his employment.[56] The Florida Court of Appeals upheld the dismissal, and an appeal was taken to the Florida Supreme Court.

Reversing the Court of Appeals, the Florida Supreme Court focused on the nature of the public employee's actions rather than the heinousness of the conduct. Specifically, the court reasoned:

> To abuse power is to use it in an extravagant manner, to employ it contrary to the law of its use, or to use it improperly and to excess. The usurpation of power has reference to the unlawful assumption, or seizure and exercise of power not vested in one, or where one interrupts another in the exercise of a right belonging to him.[57]

Thus, if the public employee is abusing power that has been lawfully delegated to them by the employing agency, the jury can find that conduct to be within the "scope of employment" without regard to the unlawfulness of the actions. For example, the Florida Supreme Court pointed to a decision by the Florida Court of Appeals in *Hennagan v. Dept. of Safety and Motor Veh*.[58] in which a highway patrol officer "arrested" a minor child pretextually and then sexually molested her. The trial court dismissed the ensuing action against the agency on the grounds that the officer's conduct was beyond the scope of employment and the agency was immunized under Florida's tort claims act.[59] The Court of Appeals reversed, however, finding that the "officer's conduct though illegal, clearly was accomplished through an abuse of power lawfully vested in the officer, not an usurpation of power the officer did not rightfully possess."[60] Thus, the Florida Supreme Court held that even heinous conduct when undertaken through lawfully delegated power can be within the scope of employment.[61]

DeCorte *Resolved*

Ultimately, the Oklahoma Supreme Court found that the jury's determination that Officer Robinson had been "acting within the scope of his employment" was legally consistent with the award of punitive damages in favor of *DeCorte*.[62] In its holding, the Oklahoma Supreme Court started from the proposition that whether an officer was acting within the scope of employment was a question of fact to be determined by the jury.[63] Moreover, the jury's determination of facts would not be disturbed as long as there was any theory supported by competent evidence that could serve as the basis for the verdict.[64]

Beyond this point, however, the Oklahoma Supreme Court's basis for its holding becomes less clear as the opinion attempts to harmonize the temporal theory discussed in *Nail* with the lawful authority theory borrowed from *McGhee*. The decision in *DeCorte* argues both theories, holding that at the time Officer Robinson began his pursuit of Mr. DeCorte, he was acting within the authority lawfully granted to him by the Broken Arrow Police Department. Although the court leaves the door open by reasoning that "an individual cannot simultaneously act in good faith and in a malicious manner," it holds that the jury could have found that Officer Robinson's actions began within the scope of employment even if it was later found to have exceeded it.[65]

Underlying this reasoning is the court's tacit adoption of *McGhee*, with which it draws a bright-line test for "scope of employment" as whether the public employee's conduct involved the abuse of lawfully vested authority or was a usurpation of authority. In either event, if the facts can support an inference in either direction, the decision is one for the jury, which will not likely be disturbed on appeal.

CONCLUSION

Claims against officers and employing agencies for excessive use of force continue to grow in Oklahoma as well as across the United States. Whether this trend reflects the reality of modern policing or an increase in the success of such claims with juries, the issue of sovereign immunity under the Oklahoma Governmental Tort Claims Act will continue to be relevant. Although Oklahoma law provides a broad avenue for plaintiffs to seek accountability, it is important for practitioners to understand that there are at least some limits at play.

ABOUT THE AUTHOR

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ENDNOTES

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2. *Rodebush v. Oklahoma Nursing Homes, Ltd.*, 1993 OK 160, ¶16, 867 P.2d 1241, 1246 (quoting Okla. Stat. Tit. 23 §9 (1991)).
3. Okla. Stat. Tit. 51 §153(a).
4. Okla. Stat. Tit. 51 §153(b).
5. Okla. Stat. Tit. 51 §152(12).
6. *DeCorte v. Robinson*, 1998 OK 87, 969 P.2d 358.
7. *Vanderpool v. State*, 1983 OK 82, ¶7, 672 P.2d 1153, 1154 (*dicta* discussing the origin of sovereign immunity) (superseded by statute).
8. *Alden v. Maine*, 527 U.S. 706 (1999).
9. Alexander Hamilton, *The Federalist Papers*, No. 81, at 487-88 (Clinton Rossiter ed., 1961) (1788).
10. *U.S. v. Lee*, 106 U.S. 196 at 218 (1882).
11. *Id.* at 220.
12. *Id.*
13. *Id.*
14. 28 U.S.C. §1346(b).
15. *Hershel v. University Hospital Foundation*, 1980 OK 60, 610 P.2d 237 (superseded by statute).
16. *Id.*
17. *Id.*
18. *Vanderpool v. State*, *supra* n. 10 at ¶10.
19. The Governmental Tort Claims Act, ch. 226, §3, 1984 O.S.L. 811, 813 (codified at 51 O.S.Supp.1984 §152.1).
20. *Barrios v. Haskell Cnty. Pub. Facilities Auth.*, 2018 OK 90, 432 P.3d 233, 237.
21. Okla. Stat. Tit. 51 §152.1(B).
22. Okla. Stat. Tit. 51 §153.
23. *See Martin v. Johnson,* 1998 OK 127, ¶28, 975 P.2d 889, 895.
24. Okla. Stat. Tit. 51 §152(12).
25. *Parker v. City of Midwest City,* 1993 OK 29, ¶¶14, 850 P.2d 1065, 1068.
26. *Tuffy's Inc. v. City of Oklahoma City*, 2009 OK 4, ¶20, 212 P.3d 1158, 1167.
27. *Speight v. Presley*, 2008 OK 99, ¶20, 203 P.3d 173, 179.
28. *Id.* (holding that designating an employee in their official capacity as a named defendant for this type of claim is improper)*; see also* Okla. Stat. Tit. 51 §163(C).
29. *Tuffy's Inc. v. City of Oklahoma City*, *supra* at n. 25, at ¶8.
30. *Cooper v. Millwood Indep. Sch. Dist. No. 37*, 1994 OK CIV APP 114, 887 P.2d 1370.
31. *Rodebush v. Oklahoma Nursing Homes, Ltd., supra* at n. 2, ¶22.
32. *DeCorte v. Robinson*, 1998 OK 87, ¶2, 969 P.2d 358, 360.
33. *Id.* at ¶3.
34. *Id.* at ¶4.
35. *Id.* at ¶7.
36. *Holman By and Through Holman v. Wheeler*, 1983 OK 72 at ¶1, 677 P.2d 645 (superseded by statute).
37. *Id.* at ¶4.
38. *Id.* at ¶7.
39. *Id.* at ¶15.
40. *Parker v. City of Midwest City,* 1993 OK 29 at ¶2.
41. *Id.* at ¶3.
42. *Id.* at ¶4.
43. *Id.* at ¶12.
44. *Nail v. City of Henryetta*, *supra* at n. 24, at ¶2.
45. *Id.* at ¶3.
46. *Id.*
47. *Id.*
48. *Id.* at ¶4.
49. *Id.* at ¶5.
50. *Id.*
51. *Id* at ¶12.
52. *Id.*
53. *Id.* at ¶13.
54. *McGhee v. Volusia County,* 679 So.2d 729 at 730 (Fla. 1996).
55. *Id.*
56. *Id.*
57. *Id.* at 731.
58. *Hennagan v. Dept. of Safety and Motor Veh.,* 467 So.2d 748 (Fla. 1st DCA, 1985).
59. *Id.* at 731.
60. *Id.* at 732 (quoting *Hennegan v. Dept. of Hghwy Safety and Motor Veh*. 467 So.2d 748 (Fla. 1st DCA 1985)).
61. *Id.* at 733.
62. *DeCorte v. Robinson*, *supra* at n. 31, at ¶14.
63. *Id.* at ¶11.
64. *Id.* at ¶9 (citing *Eversole v. Okla. Hosp. Founders Ass'n*, 1991 OK 80, 818 P.2d 456).
65. *Id.* at ¶15.

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A Century of Tort Law Related to Emotional Distress Claims in Oklahoma

By Kindra N. Dotson

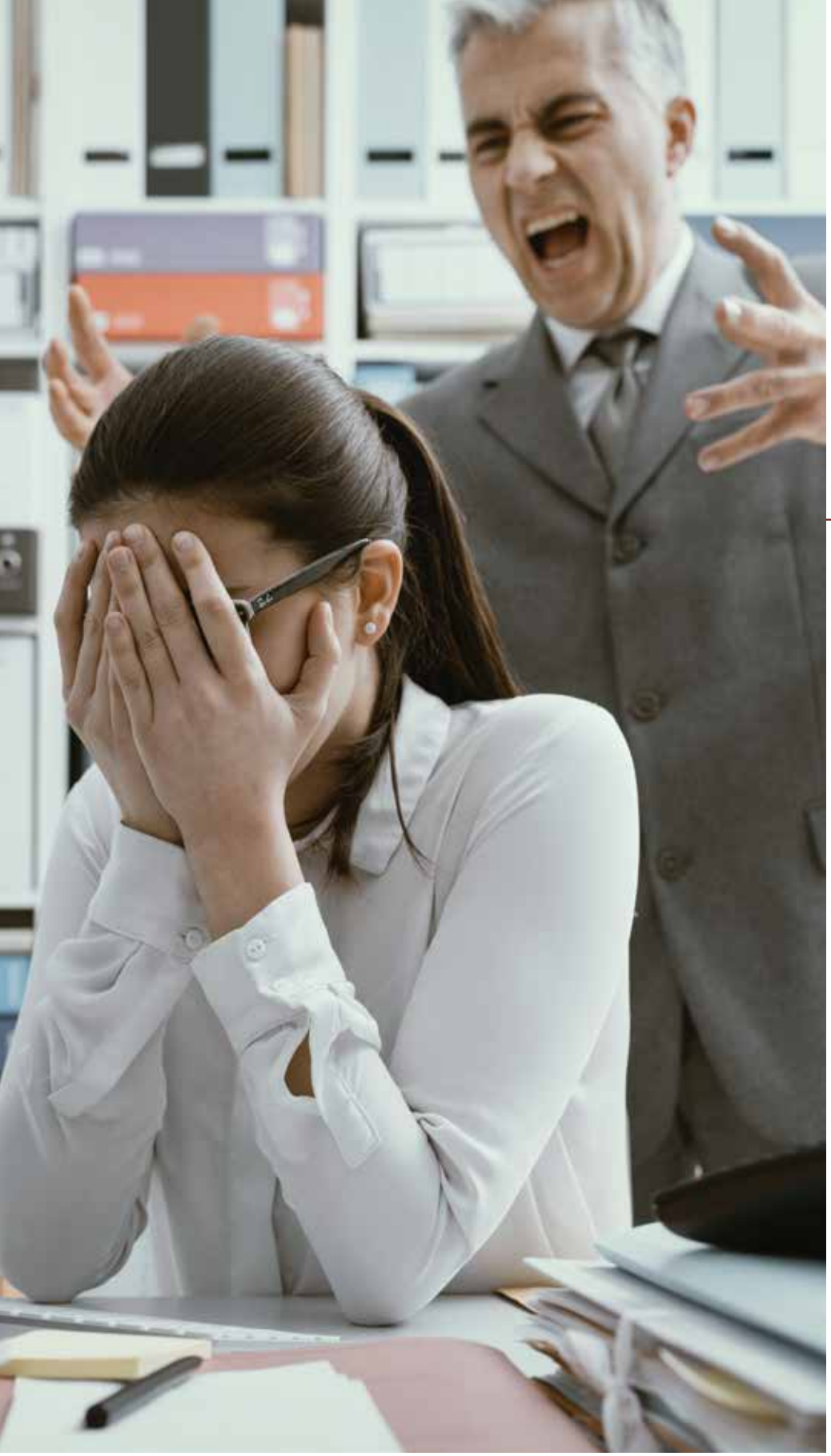
OKLAHOMA JURISPRUDENCE HAS TAKEN QUITE A JOURNEY THROUGH TIME in the emotional distress arena. It is a ride that sometimes leaves litigators a bit shaken and that has often led to inconsistent rulings on very similar facts. For example, in a case decided only four years after statehood, the court in *W. Union Tel. Co. v. Choteau*[1] observed: "The 'mental anguish' doctrine in telegraph[2] and other cases throughout the United States has been a fruitful field of discord. Not only are courts of different jurisdictions at direct variance with each other, but some of the courts which allow recovery have been at cross-purposes with themselves in their adjudications, and in all numerous instances of dissent and dissenting opinions without reference to the holding have been made and filed." The *Choteau* court ultimately held that "the right of recovery herein did not exist at common law" and that as far as the emotional distress claims, "the judgment rendered herein [in plaintiff's favor] was erroneous."[3]

It's been 114 years since then, and it seems each passing decade has brought significant developments. But what happens today in Oklahoma if your client is *distressed* and wants to sue over it? Let us travel back through time to see where the law is currently.

THE TWO CATEGORIES OF EMOTIONAL DISTRESS CLAIMS

Oklahoma has historically recognized two claims based in emotional distress: intentional infliction of emotional distress (IIED) and negligent infliction of emotional distress (NIED). Technically, Oklahoma does not recognize NIED as an independent tort claim. Rather, it is nestled within the realm of negligence in general. Accordingly, NIED claims require the plaintiff to demonstrate the four key elements of a simple negligence action: 1) The defendant owed a duty of care to the plaintiff (not to cause the plaintiff emotional distress); 2) the defendant breached that duty to the plaintiff (the tortfeasor did engage in emotionally distressing conduct to the plaintiff); 3) the breach was the actual and proximate cause of the plaintiff's injury (the emotionally distressing conduct was indeed the cause of the plaintiff's emotional distress); and 4) the plaintiff suffered actual emotional distress (the plaintiff can *prove* they suffered mentally).[4]

On the other hand, Oklahoma does recognize IIED as an independent tort. For IIED claims, plaintiffs must establish the following: 1) extreme and outrageous



conduct by the defendant (the conduct must be so egregious that it is considered atrocious and utterly intolerable in a civilized society); 2) intent or recklessness on the part of the tortfeasor (the defendant must have acted intentionally or recklessly); and 3) the suffering of severe emotional distress (the plaintiff must demonstrate severe mental distress that no reasonable person could be expected to endure).[5] These criteria are outlined in the Oklahoma Uniform Jury Instructions, which define emotional distress as encompassing "mental distress, mental pain and suffering, or mental anguish," including reactions such as "fright, horror, grief, humiliation, embarrassment, anger, chagrin, disappointment, and worry."[6]

Early Oklahoma jurisprudence on emotional distress focused intently on whether the alleged mental injury was accompanied by physical injury to the plaintiff. The question, therefore, became whether bodily injury was necessary to establish an emotional distress claim, whether negligent or intentional. Notably, Oklahoma

law typically requires that emotional distress be accompanied by physical injury or that the plaintiff was directly involved in the incident leading to the distress. Mere bystanders or those without a physical manifestation generally cannot recover.

EARLY JURISPRUDENCE

W. Union Tel. Co. v. Choteau

One of the earliest Oklahoma cases to deal with an emotional distress claim was *Choteau*, *supra*, in 1911. There, the plaintiff claimed emotional distress from the defendant's negligent delivery of a telegram. Defendant Western Union was charged with getting to Mr. Choteau a "prepaid telegram, announcing the serious illness of [his] father. It read 'William very low: notify Ed and Julia.'"[7] But the telegram was late, and Mr. Choteau missed the opportunity to say his goodbyes to his dying father. The court stated its task: "May a party ... recover substantial damages solely for the mental distress occasioned by the negligence on the part of the delivery company ... where such negligence results in denying him an opportunity of attending upon his father in his last illness, and seeing him prior to his death."[8]

In order to answer this question, the court roamed through the already prolific national case law on emotional distress claims. Ultimately, it concluded that purely mental injury claims (as opposed to physical claims involving mental injury) were not found at common law; therefore, without statutory authority for such claims, the plaintiff could not recover on his NIED claim.[9] The court reasoned it was not "wise to venture upon the far more speculative field of mental anguish" and that mental anguish alone "will not sustain an action for damages."[10]

St. Louis & San Francisco Railway v. Keiffer

A few years later, in 1915, in *St. Louis & San Francisco Railway v. Keiffer*,[11] the plaintiff sued the railway for breach of contract. The plaintiff's brother was very ill and needed to travel from Madill to Gainesville, Texas, for a lifesaving operation. The plaintiff contracted with the railway to "run a special train ... for the sole purpose of carrying his sick brother to Gainesville."[12] The dying brother, while on the train, became aware that his connection would be missed. As a result, according to the plaintiff, the brother's condition "grew worse, and [he] abandoned all hope of life, and died shortly after."[13] The plaintiff alleged that he "endured great mental pain and suffering on account of the delay and by reason of witnessing the suffering and worry of his sick brother, which was intensified by reason of the delay."[14]

The court unsympathetically declared, "No recovery can be had for mental pain and anguish, which is not produced by, connected with, or the result of, some physical suffering or injury, to the person enduring the mental anguish."[15] It made clear that only mental injury that accompanies specific physical suffering is actionable and therefore compensable. "Damages for pain suffered mentally, as the result of a physical injury, are allowed, for the reason that such mental suffering is necessarily a part of the physical suffering and injury, and is inseparable therefrom."[16]

The *Keiffer* court stated:

> Whether we personally agree with the rule or not, nevertheless it is the law of Oklahoma that no recovery can be had for mental suffering, which is not produced by, connected with, or the result of physical suffering or injury, to the person enduring the mental anguish. There is no question ... the plaintiff suffered mental pain and anguish by reason of the fact that the train was delayed – his brother was suffering, and he had hoped for relief to his brother on reaching Gainesville – but that mental pain and anguish was disconnected with, and not the result of, any physical suffering or injury sustained by himself. In his amended petition he complains that he suffered with cold while waiting on the track and during the trip, and that he lost sleep on account of the delay; and it is manifest that the mental anguish contemplated by the instruction, under consideration, was not produced by either of these alleged injuries to himself.[17]

The *Keiffer* court further held, "Damages for mental suffering are not allowable, save as incidental to physical injury, but that: 'In the case of a physical injury, damages for pain suffered, bodily and mentally, are allowed for the reason that such mental suffering is necessarily a part of the physical injury, and inseparable therefrom.'"[18]

MID-CENTURY PROGRESS

Thompson v. Minnis

Emotional distress litigation lulled for a bit until a particularly interesting case was decided in the 1940s, *Thompson v. Minnis*.[19] In that case, plaintiffs claimed to have suffered mental distress arising from hunger.[20] The plaintiffs

One of the earliest Oklahoma cases to deal with an emotional distress claim was *Choteau*, *supra*, in 1911. There, the plaintiff claimed emotional distress from the defendant's negligent delivery of a telegram.

requested that the railroad agent issue a ticket to deliver her and her child to Lilbourn, Missouri, but the agent erroneously wrote the destination as Lebanon, Missouri.[21] The young mother arrived with her child at the Lebanon depot, finding herself stranded and unsure of her safety in the unknown town. She was advised by the conductor to stay close to the train station.[22] The plaintiff was "without means with which to purchase food ... [and] ... stayed in or around the depot for about twenty-four hours without food or shelter other than the depot."[23]

The jury found for the plaintiffs, and the defendant appealed, citing error in the jury instruction "to the effect that plaintiffs could recover for pain, suffering, mental anguish and distress."[24] The court quickly committed to the premise that "the right to maintain an action may not be predicated upon a mental or emotional disturbance alone."[25] The court cited 15 Am. Jur. 597, 598:

> In law mental anguish is restricted, as a rule, to such mental pain or suffering as arises from an injury or wrong to the person himself, as distinguished from that form of mental suffering which is the accompaniment of sympathy or sorrow for another's suffering or which arises from a contemplation of wrongs committed on the person of another. Pursuant to the rule stated, a husband or wife cannot recover for mental suffering caused by his or her sympathy for the other's suffering. Nor can a parent recover for mental distress and anxiety on account of physical injury sustained by a child or for anxiety for the safety of his child placed in peril by the negligence of another.[26]

It acknowledged that the plaintiff "no doubt ... suffered anguish and anxiety by reason of the fact that her small child was stranded in a strange town, among strangers, and without money to pay her fare to her proper destination."[27] The court stood firm, however, in holding that "such mental anguish and distress were not produced by, connected with, or the result of any physical suffering or injury to the [plaintiff's] person."[28] The plaintiff's claims for worry and fear were dismissed by the court.

But such was not the case when it came to the plaintiff suffering from hunger! The court explicitly stated that hunger, which the plaintiff "must have suffered ... could well produce mental anguish and anxiety connected with and produced by physical suffering."[29] Hunger is the "painful sensation or state of exhaustion caused by need of food."[30] So, as to *hunger*, the plaintiff was entitled to recover for the emotional distress that accompanied it.

Seidenbach's, Inc. v. Williams

In the 1960s, the Supreme Court of Oklahoma stayed on trend in deciding *Seidenbach's, Inc. v. Williams*.[31] It coldly tossed a distressed bride's claims for mental anguish, humiliation and embarrassment, where she suffered no physical injury. In that case, the defendant failed to timely deliver the gown and veil for the plaintiff's wedding.[32] The disgruntled bride sought retribution in the courts, suing for breach of contract and a whopping $10,000[33] in damages for "mental distress, and/or unhappiness."[34]

Out of the gate, the court recited the well-settled maxim, "Mental anguish of itself cannot be treated as an independent ground of damages so as to enable a person to maintain an action for that injury alone."[35] It then made clear that the plaintiff "neither alleged nor proved that [the contract breach] caused her any physical injury, or that her injured, vexed, or perturbed feelings from such breach were caused, connected with, or aggravated, or produced, any such injury or disability."[36] Ultimately, the court hearkened back to

Thompson v. Minnis in holding, "Oklahoma law does not compensate for mental anguish or disturbance alone – it must be part of the physical suffering and inseparable therefrom, as where the mental anguish is superinduced by physical hunger pains."[37]

In these cases, which dealt exclusively with the *negligent* infliction of emotional distress, recovery was denied when the mental suffering was unaccompanied by a physical injury. But it was hunger that opened the door for Oklahomans to assert a variety of NIED claims.

Mashunkashey v. Mashunkashey

Meanwhile, case law on IIED began to quietly develop. The first big case was *Mashunkashey v. Mashunkashey*,[38] where the plaintiff sued the defendant for "inducing plaintiff to enter into the bigamous marriage" and sought compensatory and punitive damages "resulting from humiliation, injury to reputation, etc."[39] The trial court annulled the marriage and awarded both compensatory and exemplary damages to the plaintiff.[40] In affirming, the Supreme Court of Oklahoma explained that the "prayer for damages was based on the allegation of injured reputation, mental suffering and humiliation ... nothing of a tangible nature upon which to base the pecuniary detriment suffered."[41] And further, "Injury to reputation will support an action for damages; but mental pain and suffering alone will ordinarily constitute *but an element* of damages."[42]

For the first time, however, the court delved into the *willful* nature of the defendant's wrong, declaring, "Mental pain and suffering may constitute the basis of an independent action in cases of *willful wrong* of the character where mental suffering is recognized as the ordinary, natural and proximate result of such wrong."[43] In the court's analysis, the defendant's fraud in inducing the plaintiff into a bigamous marriage constituted a willful wrong from which emotional distress would naturally result. Specifically, mental pain and suffering "constituted a sufficient ground upon which to predicate her actions for deceit."[44]

In *Mashunkashey,* the court went a step further in explicating the damages. It opined, "As to mental pain and suffering, the court, or the jury, as the case may be, is authorized to award such a sum as in its discretion will reasonably compensate the plaintiff under the circumstances."[45] Basically, the amount awarded to an aggrieved sufferer of *willful emotional distress* (IIED) "is governed largely by the mental reaction of the jury, or court, based upon their knowledge and experience in observing human nature as affected by the particular facts and circumstances."[46]

Dean v. Chapman

Later, when disco was thriving, the Oklahoma Supreme Court decided *Dean v. Chapman*,[47] a case about a public autopsy. In *Dean,* the plaintiff alleged mental injury when the defendant refused to conduct a timely autopsy of her father and then performed the autopsy at an outdoor and public site.[48] The court ultimately held that the act of conducting an autopsy on a partially decomposed body in public view was *not* of sufficient character to be considered a willful wrong of the nature contemplated by *Mashunkashey*.[49] ("This Court does not believe that mental anguish arising from the performance of an autopsy pursuant to Court Order in open field where the body is partially decomposed is a case where mental anguish is recognized as an ordinary and natural consequence.")[50] So apparently, the distress of watching the decomposing body of a loved one being autopsied in public did not meet the court's standards for an IIED claim.

To justify its decision, the *Dean* court quoted Section 46 of the *Restatement of Torts (Second)*, Comment D: "The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his

The 80s saw a flurry of emotional distress cases in which courts finally ruled that physical suffering was *not* a prerequisite for such claims.

conduct has been characterized by 'malice.'"[51] And, further, that liability will be "found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."[52] So the *Dean* court gave us some idea of the degree and severity of the willful conduct one must suffer in order to bring a surviving IIED claim.

LATE 20TH CENTURY CASES

Williams v. Lee Way Motor Freight, Inc.

The 80s saw a flurry of emotional distress cases in which courts finally ruled that physical suffering was *not* a prerequisite for such claims. The court, in *Williams v. Lee Way Motor Freight, Inc.*,[53] explained that Oklahoma continues to follow the *Restatement (Second) of Torts*, Section 46, which provides that "the right to recover damages for emotional distress is not dependent on physical injury," but the court specifically recognized that Oklahomans have rights to "emotional and mental security ... sufficiently important to warrant protection even in the absence of physical suffering."[54]

Ellington v. Coca-Cola Bottling Co. of Tulsa

Next came *Ellington v. Coca-Cola Bottling Co. of Tulsa*,[55] addressing a negligent emotional distress claim where the physical injury was, in fact, caused by the plaintiff's emotional distress. In *Ellington*, the plaintiff drank from a Coke bottle in which she later observed a foreign object, which she feared was a worm.[56] She immediately became physically ill at the thought that she might have ingested a worm (it turned out to be a piece of candy!).[57] Ms. Ellington's illness – consisting of nausea, diarrhea and fever – persisted for a month, and she eventually became dehydrated and developed a kidney infection. There was no question that the "plaintiff's vomiting and illness was due to a psychological reaction."[58]

The *Ellington* court ultimately concluded that physical injury need not *precede* an emotional distress claim. It declared that recovery for mental damages should not depend on whether mental suffering preceded or succeeded the physical suffering.[59] The court surmised that, historically, recovery was not denied to "persons suffering mental anguish which causes physical harm to the person enduring the mental suffering."[60] Therefore, it ultimately held, "Here the fact that plaintiff's physical injury was induced by the emotional shock of finding the foreign substance in her drink is not fatal to her recovery – the mental pain and anguish was connected to physical suffering and injury."[61]

Slaton v. Vansickle

In the 1990s, the Supreme Court of Oklahoma decided *Slaton v. Vansickle*,[62] wherein a defendant asserted a NIED claim against a co-defendant firearm manufacturer. In *Slaton*, defendant Mr. Vansickle placed a rifle in the back of his truck, where it discharged, killing a bystander, plaintiff Mr. Slaton's daughter. He then "left [it] in his truck not knowing of the death until he was contacted a few hours later."[63] Mr. Vansickle cross-claimed against the firearm manufacturer under what the court determined was the bystander theory. He alleged "great pain of body and mind, emotional and mental distress" as a result of the young girl's death.[64]

The trial court found for the manufacturer and entered summary judgment on the NIED claim. Our Supreme Court upheld the trial court's ruling "regarding negligent infliction of emotional distress because Vansickle was in fact arguing bystander theory and Oklahoma law did not entitle him to recover."[65] Mr. Vansickle did not "have a recognizable cause of action under Oklahoma law."[66] The court reasoned, "He must have shown a personal injury directly resulting from the gun's discharge. This he cannot do."[67] Specifically, Mr. Vansickle's "injury came about only *after* learning the gun's accidental discharge had caused a death, not, because *he was injured* from the discharge. Vansickle is in truth, arguing nothing different than negligent infliction of emotional distress under some type of *bystander* theory."[68]

The court explained it was not any act of the gun manufacturer that led to the plaintiff's mental suffering, but the true cause of the mental distress was the death of the bystander.[69] This implicated the supervening and intervening cause doctrines. It was sure to reiterate that "a rule long recognized in Oklahoma that recovery for mental anguish is restricted to such mental pain or suffering *as arises from an injury or wrong to the person rather than from another's suffering or wrongs committed against another person*."[70] So the court was firm in holding that bystanders alleging NIED claims have no cognizable cause of action.

Kraszewski v. Baptist Medical Center of Oklahoma, Inc.

But for every statement of black-letter law, there is generally an exception. Just a few years after *Slaton* was decided, the court carved out an important exception in *Kraszewski v. Baptist Medical Center of Oklahoma, Inc., supra*. The *Kraszewski* case dealt with intentional, rather than negligent, infliction of emotional distress claims, which turned on the timing of the injurious event and the alleged distress. There, the plaintiff asserted IIED claims against the defendant drunk driver for the distress of witnessing his wife of 38 years being dragged 60 feet under a truck. His wife ultimately died, but his IIED claims survived.

The court made the important distinction that the plaintiff was not, in fact, a bystander but was a direct victim. The distinguishing fact was that the plaintiff husband was also injured in the collision, although not as fatally as his wife. The plaintiff was "struck in the shoulder, the chest, and the knee and knocked back from the truck."[71] The court laid out the requisite elements to maintain an IIED claim, stating, "It must be shown that: 1) the plaintiff was directly physically involved in the incident; 2) the plaintiff was damaged from actually viewing the injury to another rather than from learning of the accident later; and 3) a familial or other close personal relationship existed between the plaintiff and the party whose injury gave rise to the plaintiff's mental anguish."[72]

The *Kraszewski* case was particularly egregious in that the Kraszewskis, an elderly couple, were walking hand-in-hand in a Buy For Less parking lot when "the

couple's hands were torn asunder by the impact of the accident, the driver severed their thirty-eight year marriage."[73] The "accident" to which the court refers was the result of a severely intoxicated driver ripping through the parking lot, striking the couple and dragging the wife while the plaintiff begged the defendant to stop his truck. When the truck finally did stop due to traffic, the plaintiff held his wife "and comforted her until the paramedics arrived."[74]

The *Kraszewski* case presented a "novel issue ... whether [the plaintiff] may recover damages for intentional infliction of emotional distress arising from seeing his wife fatally injured."[75] The *Kraszewski* court acknowledged, "Oklahoma has never recognized an action for mental suffering caused by witnessing an injury to another."[76] It reasoned, "However, none of these cases in which we denied recovery involved circumstances in which the plaintiff was actually injured in the accident."[77] In its analysis, the court made clear that there exist "two categories of parties in actions to collect for emotional distress – 'bystander' and 'direct victim' plaintiffs. Recovery is based on whether a duty is imposed on the defendant to avoid inflicting emotional harm to the party."[78]

The court explicitly declared the *Kraszewski* case "factually distinguishable" from *Vansickle* because Mr. Vansickle was "not involved directly in the accident," while Mr. Kraszewski "was a direct victim – he was a part of the accident which caused his mental suffering."[79] It further distinguished *Vansickle* by the fact that the aggrieved there did not observe the shooting of the girl, while in the *Kraszewski* case, the husband viewed his wife's dragging and was "subjected to the same fear and danger which caused injury to the other party."[80] So the husband was a direct victim of the drunk driver defendant, and the defendant, therefore, owed a duty to the plaintiff not to run him down in a grocery store parking lot in broad daylight.

The court put it a bit more eloquently by stating that *Kraszewski* established that the defendant

"breached his duty to the husband when he negligently struck and injured him with his truck." Thus, the NIED claims survived.[81] *Kraszewski* further established that he 1) was directly physically involved in the incident, 2) was emotionally damaged by viewing his wife's injury in real time and 3) had a close personal relationship with his wife.

MODERN DEVELOPMENTS

Ridings v. Maze

The *Ridings v. Maze*[82] case brought us into the 21st century. In *Ridings,* a young child exited the school bus only to be struck and killed by a passing car. The plaintiffs – the decedent's parents and siblings – witnessed the horrific death of their loved one.[83] They asserted both NIED and IIED claims against the driver and the school. "The dispositive issue ... center[ed] on whether the bystander plaintiffs, who were not involved in the auto-pedestrian traffic accident but say they witnessed it from the window of their house, can recover against defendants for infliction of emotional distress."[84] The court decided they could not and dismissed the emotional distress claims.

The court's decision again centered on whether the alleged mental distress sufferers were bystanders or direct victims. In *Ridings,* the court determined the plaintiffs to be bystanders and, once more, used the *Vansickle* case for distinction. "Unlike the husband in *Kraszewski*, the driver herein did not physically harm Plaintiffs, nor were Plaintiffs even outside or in harm's way."[85] "Plaintiffs' claims fall under *Kraszewski's* definition of a 'bystander' because the basis for liability rests solely on the fact that they witnessed the accident, not that any defendant physically injured them."[86] The court concluded that the facts were much more in line with *Slaton*, where the "Plaintiff's emotional distress 'resulted from the wrong to another' – the driver injuring their child."[87] Thus, there could be no recovery for either NIED or IIED claims asserted by plaintiffs.

Hutchinson v. City of Okla. City

But what *is* emotional distress anyway? Federal courts, including those in Oklahoma, have helped guide us in what exactly constitutes emotional distress. One important case in Oklahoma's Western District is *Hutchinson v. City of Okla. City*.[88] In that case, a city employee sued the city for NIED arising out of her discrimination claims. The plaintiff's claim was denied on other grounds, but it did explore what suffering meets the threshold for emotional distress claims. In doing so, the court denied the city's argument that the NIED "claim must fail because she did not allege a physical injury, as required by *Ellington*."[89] The court, however, made clear that "'migraines and stress that affected her work and her ability to sleep' and '[plaintiff] also broke her molar because of her grinding her teeth'" were "all physical manifestations of emotional distress."[90]

Wilson v. Muckala

The *Hutchinson* court harkened back to a 10th Circuit case arising out of Tulsa County, *Wilson v. Muckala*.[91] In *Wilson*, the plaintiff's sexual harassment action included a claim for NIED. The court denied it because it found a "lack of evidence of physical injury," explaining, "Oklahoma law obligated Ms. Wilson to provide proof of some physical injury, whether incurred contemporaneously with her emotional injury, or whether as a direct consequence of her emotional injury."[92] However, it recognized that the plaintiff did, in fact, suffer emotional distress in that "she described increasing feelings of humiliation, intimidation, very, very strong subjective unpleasant feelings as well as increasing depression. She had difficulty sleeping, crying, sad, gained weight, lost interest in working, felt not safe working as a nurse."[93] Other Oklahoma courts have characterized emotional distress as "fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea," to name a few.[94] Also, emotional distress has been manifested where the sufferer "cried [and] lost weight, had a rash all over her arms and legs ... and would shake."[95]

CONCLUSION

In sum, over a century of Oklahoma jurisprudence on emotional distress has yielded two consistent principles: First, claims for NIED must be brought within the framework of a broader negligence cause of action – they do not stand alone; second, whether the claim is based on negligence or intentional infliction, Oklahoma law generally requires some form of physical manifestation of the distress, either preceding or resulting from the emotional injury. So if your client insists they've been wronged and seeks to recover for emotional distress, the answer to whether they can bring a viable claim remains that it depends. The emotional harm must be more than abstract; it must be legally cognizable.

ABOUT THE AUTHOR

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ENDNOTES

1. 1911 OK 216, ¶3, 115 P. 879.
2. *Choteau* opinion cites to prior "telegraph" cases from Alabama, Texas, Louisiana, Nevada, North Carolina, Iowa and Kentucky, so it is uncertain to which "telegraph" case the court refers to here.
3. *Choteau* at ¶38.
4. *Kraszewski v. Baptist Medical Center of Oklahoma, Inc.*, 1996 OK 141, ¶¶1, 13, 916 P.2d 241; *Breeden v. League Services Corp.*, 1978 OK 27, ¶¶6-12, 575 P.2d 1374.
5. *See* Okla. Uniform Jury Instruction-Civil 20.1.
6. *Id.*
7. *Id.* at ¶1, 879.
8. *Id.*
9. *Id.* at ¶¶37-38.
10. *Id.* at ¶¶34, 34 [citations omitted].
11. 1915 OK 381, 150 P. 1026.
12. *Id.* at 1027.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 1028 [citation omitted].
19. 1949 OK 29, 202 P.2d 981.
20. *Id.* at 986.
21. *Id.* at 983.
22. *Id.*
23. *Id.*
24. *Id.* at 984.
25. *Id.* at 985.
26. *Id.*
27. *Thompson* at 985.
28. *Id.*
29. *Id.* at 986.
30. *Id.*
31. 1961 OK 77, 361 P.2d 185.
32. *Id.*
33. The 2024 equivalent is approximately $105,000 according to https://bit.ly/4osjQna (accessed April 22, 2025).
34. *Id.*
35. *Id.* at 187 (quoting *Nail v. McCullough & Lee,* 1923 OK 102, 212 P. 981).
36. *Id.*
37. *Id.* at 188.
38. 1941 OK 113, 113 P.2d 190.
39. *Id.* at 190.
40. *Id.*
41. *Id.* at 191.
42. *Id.* (emphasis added).
43. *Id.* (emphasis added).
44. *Id.*
45. *Id.* at 192.
46. *Id.*
47. 1976 OK 153, 556 P.2d 257.
48. *Id.* at 257.
49. *Id.* at 260.
50. *Id.*
51. *Id.* at 261.
52. *Id.*
53. 1984 OK 64, 688 P.2d 1294, 1296.
54. *Id.*
55. 1986 OK 11, 717 P.2d 109.
56. *Id.*
57. *Id.*
58. *Id.* at 110.
59. *Id.* at 111.
60. *Id.*
61. *Id. See also Chandler v. Denton*, 1987 OK 38, 741 P.2d 855, 866 (recognizing that physical injury is not required for emotional distress claims).
62. 1994 OK 39, 872 P.2d 929.
63. *Id.* at 930.
64. *Id.*
65. *Id.* at 929.
66. *Id.* at 930.
67. *Id.* at 931.
68. *Id.* (emphasis in original).
69. *Id.* at 931.
70. *Id.* (emphasis in original).
71. *Id.*
72. *Id.* at 242.
73. *Id.* at 247.
74. *Id.* at 244.
75. *Id.* at 242-43.
76. *Id.* at 245.
77. *Id.*
78. *Id.* at 246.
79. *Id.* at 247.
80. *Id.* at 247-48.
81. *Id.* at 247.
82. 2018 OK 18, 414 P.3d 835.
83. *Id.*
84. *Id.* at 837.
85. *Id.* at 838.
86. *Id.* at 839.
87. *Id.* at 838-39.
88. 919 F. Supp. 2d 1163, 1183 (W.D. Okla. 2013).
89. *Id.*
90. *Id.*
91. 303 F.3d 1207, 1213 (10th Cir. 2002).
92. *Id.*
93. *Id.*
94. *Computer Publications, Inc. v. Walton,* 2002 OK 50, 49 P.3d 732, 736.
95. *Id.*

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A free, hands-on workshop for new lawyers or those going into private practice. Registration is required. Contact Nickie Day at 405-416-7050 or nickied@okbar.org.

8:30 a.m. **Registration and Continental Breakfast**

9:00 a.m. **Designing a Client-Centered Law Firm**
Kenton Brice, Director of Technology Innovation, OU Law Library
A hands-on, design-oriented workshop focused on building your firm around the client experience.

10:00 a.m. **AI Prompting for Lawyers: Build Smarter Workflows**
Sean Harrington, Director of Technology and Innovation, OU College of Law
Learn how to craft effective prompts for legal research, drafting and productivity using generative AI tools.

11:00 a.m. **Break**

11:10 a.m. **What You Need To Know About Malpractice Insurance**
Phil Fraim, President and CEO, Oklahoma Attorneys Mutual Insurance Co.
What lawyers need to understand about coverage, risk management and starting your policy off right.

12:10 a.m. **Lunch**

1:00 p.m. **Building Your Law Firm Tech Stack: Tools With ROI in Mind**
Learn about cost-effective tech tools for law firms, including practice management, document automation and communication systems.

2:00 p.m. **Trust Accounting Workshop**
Gina Hendrix, OBA General Counsel, and Julie Bays, OBA Management Assistance Program Director
An overview of the OBA's role in regulating lawyers and preventing misconduct and an interactive session with a reconciliation exercise to help you build confidence in managing client funds.

2:50 p.m. **Business Planning Lab: Building Your Blueprint**
Julie Bays, OBA Management Assistance Program Director
In this session, you'll start drafting a basic business plan for your practice and learn how to create a simple process manual. Templates and examples will be provided.

4:00 p.m. **Adjourn**

Sponsored by Oklahoma Attorneys Mutual Insurance Co. This program does not qualify for MCLE credit.

Property Owners Beware! 'Not My Dog' Defense Loses Its Bite

By Keith F. Givens

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FOR DECADES IN OKLAHOMA, property owners facing lawsuits for injuries caused by tenants' dogs often relied on a "not my dog" defense. If the dog was not legally theirs, they asserted that they bore no liability. However, recent decisions and evolving municipal ordinances have narrowed that defense. Courts and cities are increasingly holding property owners accountable when they allow dangerous or aggressive dogs to reside on their premises, even if those dogs are owned by tenants. This article highlights the most significant case law and ordinances that shift the liability landscape. It also offers practical guidance for attorneys advising property owners on how to mitigate risk and prevent avoidable harm to others.

STRICT LIABILITY UNDER 4 O.S. §42.1

The starting point for any discussion of Oklahoma's approach to liability for a victim's injuries or death from an unprovoked attack is the strict liability standard implemented through 4 O.S. §42.1. Under this statute, "The owner or owners of any dog shall be liable for damages to the full amount of any damages sustained when his dog, without provocation, bites or injures any person while such person is in or on a place where he has a lawful right to be." For 4 O.S. §42.1 to apply, the first element that must be evaluated is who can be considered the owner(s) of the subject dog. This issue has been debated in numerous cases, and not surprisingly, many property owners have asserted "not my dog" in defense of negligence and negligence per se claims asserted by plaintiffs after attacks committed by tenants' dogs.

For many years, property owners avoided liability for injuries caused by tenants' dogs through appellate opinions that mostly resolved disputes involving absentee landlords who asserted a lack of ownership or knowledge of such dogs living on their properties.[1] Whenever property owners faced liability for such injuries, they asserted a "not my dog" defense regardless of whether they were an absentee landlord or had knowledge of the dogs that attacked without provocation.

CASE STUDY: *HAMPTON V. HAMMONS*

In *Hampton by and Through Hampton v. Hammons*, a young boy sustained serious injuries from being mauled by a pit bull that lived at the property owner's home in Tulsa.[2] The injured boy lived next door to the defendant's property, and his parents sued under various grounds, including negligence and negligence per se. The defendant allowed two pit bulls owned by his adult children to live at his property, but he disputed any liability for the attack

based on his lack of ownership of the dogs.

The parents' negligence allegations included claims of failing to properly maintain the fence between the properties and keeping the pit bulls on chains designed to keep them in close proximity to each other while prohibiting their contact (known for making such dogs aggressive). Based upon such evidence, the court ruled that a jury must determine if the defendant is liable for the child's injuries in spite of his "not my dog" defense.

The parents' negligence per se allegations were based upon three ordinances that prohibited vicious dogs from being kept in Tulsa and expanded the definition of "owner" beyond the scope of Oklahoma's dog bite statute (4 O.S. §42.1). Title 2, Ch. 1: §§2(d), (1)(d) and §(1)(b) (1973). Section 2(d) defines what constitutes an offense:

> It shall be an offense under the terms of this Chapter for any owner within the corporate limits of the City of Tulsa to: … Harbor, keep or have possession of any vicious animal.

Sections (1)(d) and (1)(b) define "owner" and "vicious animal" for purposes of 2(d). An owner within §(1)(d) is not limited to individuals with a legal right to possession and includes anyone who cares for, has custody of, keeps or maintains any dog, cat or domestic animal. A vicious animal under §(1)(b) is defined broadly and encompasses more than vicious propensities attributable to a specific animal or breed known to be naturally fierce or to attack humans/animals without provocation. Specifically, (1)(b) defined vicious animal as "one not only of a disposition to attack every person or animal it may meet, but it includes as well a natural fierceness or disposition to mischief, as might occasionally lead it to attack human beings, or animals, without provocation."

According to *Hampton*, "When a city ordinance is violated, the elements of actionable negligence are: (1) the injury must have been caused by the violation; (2) the injury must be of a type intended to be prevented by the ordinance; and (3) the injured party must be one of the class meant to be protected by the ordinance."[3] All three elements were satisfied, and the ruling on the first element (causation) was determined by disputed material facts concerning: 1) disrepair of the fence separating the parties' backyards, 2) ownership of the fence, 3) whether the manner in which the dog that attacked the child was maintained/chained led it be aggressive, 4) the defendant's knowledge of the child's previous entries into his backyard and 5) whether the defendant impliedly consented to the child entering his property. Thus, the court held that a jury had to resolve the parents' negligence per se allegations as well.

In regard to 4 O.S. §42.1, the court analyzed four elements that must be proven: 1) ownership of the subject dog, 2) lack of provocation, 3) injury caused by the subject dog and 4) the victim being lawfully present where the attack took place.[4] In most cases, appellate courts applied a narrow standard to who qualifies as an "owner" under 4 O.S. §42.1. However, the *Hampton* court applied Tulsa Ordinance (1)(d) cumulatively with 4 O.S. §42.1 because it expanded "owner" to include persons who harbor or exercise control over a dog, and such expansion is consistent with the city of Tulsa's legitimate concern of protecting its residents from injuries or death from vicious dogs. As a result, the defendant/property owner was deemed to be an owner of the pit bull that attacked the young boy.[5]

MUNICIPAL ORDINANCES EXPANDING LIABILITY

The definition of "owner" is also broader than typical in other cities' ordinances, presumably to achieve the same protection of residents recognized in *Hampton*. The cities with such ordinances include Altus (4-1), Ardmore (5-1), Bixby (5-6A-1), Broken Bow (6-1), Del City (4-4), Edmond (7.08.050(c)), El Reno (135-1), Enid (5-7-1), Lawton (5-1-101(34)), Moore (4-101), Mustang (14-1), Oklahoma City (8-5(19) and 8-131(f)), Spencer (6-1) and Yukon (14-1). To avoid problems, property owners should periodically monitor the ordinances for cities in which they have properties, since new or amended ordinances may be issued.

Other cities have implemented different ordinances to prevent dangerous and menacing dogs from being kept on any property within city limits. The city of Oklahoma City enacted ordinances that prohibit all property owners from allowing any dangerous or menacing animals to be harbored, possessed or maintained on their properties. Ordinance 8-132 provides: "(a) It shall be unlawful for any person to own, harbor, possess, or maintain a *dangerous animal*, except as authorized by order of the Municipal Court. *No person who has an ownership interest in real property shall permit another person to harbor, possess, or maintain on that property any dangerous animal*, except as authorized by order of

Thus, any attorneys who represent property owners, whether they rent such properties to tenants or not, should notify their clients immediately. Failure to comply with the mandates of these ordinances can cost lives and result in substantial liability for injuries caused by dogs or other animals that fall within their definitions of 'dangerous' or 'menacing.'

the Municipal Court."[6] Ordinance 8-133 declares: "(a) It shall be unlawful for any person to own, harbor, possess or maintain a *menacing animal*, except as authorized by order of the Municipal Court. *No person who has an ownership interest in real property shall permit another person to harbor, possess, or maintain on that property any menacing animal,* except as authorized by order of the Municipal Court."[7] Ordinance 8-131 defines dangerous and menacing as follows:

> (c) Dangerous animal means any animal: (1) that bites or inflicts an injury upon a person or domestic animal; or (2) that is owned, trained, used, or harbored, primarily or in part, for the purpose of animal fighting.
>
> (e) Menacing animal means an animal that growls, snarls, takes an aggressive stance, or shows its teeth toward a domestic animal or person, or that destroys property (e.g., a fence) in an attempt to get to a person or domestic animal.

It is easy to understand how these ordinances should dramatically reduce the number of violent attacks on children and adults throughout Oklahoma City, but only if property owners know and comply with them. Thus, any attorneys who represent property owners, whether they rent such properties to tenants or not, should notify their clients immediately. Failure to comply with the mandates of these ordinances can cost lives and result in substantial liability for injuries caused by dogs or other animals that fall within their definitions of "dangerous" or "menacing."

In a recent case, *Terrell v. Chapman, et al.*, the owner of a residential development within Oklahoma City limits was held liable for severe injuries suffered by a 6-year-old girl in an unprovoked attack by a rottweiler allowed to live in a duplex in the development.[8] At trial, the injured child's mother asserted negligence and negligence per se claims against the property owner based upon its disregard of complaints about aggressive acts by the rottweiler and violations of §§8-131 and 8-132 (previous versions). Before the attack, the property owner received multiple emails reporting the dog had shown aggressive behavior over several months. Some of these emails included photographs of fence damage caused by the dog, along with complaints that it was being kept outside in extreme weather. Yet, the property owner never took any action to remove the rottweiler or its owners from the property, which it was empowered to do under its lease with the tenants who owned that dog. Instead, it proceeded with a "not my dog" posture that proved unwise and contrary to the above-referenced ordinances. The jury awarded over $5 million

against the property owner for the child's injuries and prominent scarring that will be visible on her face for the rest of her life.

RECENT APPELLATE DECISION

A recent opinion from the Oklahoma Court of Civil Appeals (*Wishon v. Hammond*) also involved allegations about inadequate fencing and other negligent acts against a property owner for injuries caused by a tenant's dog.[9] In *Wishon*, a pedestrian was attacked as he walked past a property where the owners allowed a tenant to keep a pit bull/mastiff mix. One of the factors referenced in this opinion is the defendants' prohibiting all the tenants at different properties from keeping any animals pursuant to written lease provisions. The court also recognized that the defendants had notice from animal control officers that the subject dog was known to leave their property due to a lack of fencing. The defendants did purchase an enclosure for the dog, but they were notified that it was not kept in the enclosure or restrained with a chain that would have kept it on their property. Additionally, the enclosure was not big enough to keep the dog controlled on a long-term basis, and it was placed in an area that made it easy for the dog to escape. Based upon all the evidence, the court ruled that a jury would decide the pedestrian's general negligence allegations. The *Wishon* court did not deem the defendants to be "owners" for purposes of strict liability under 4 O.S. §42.1, as the *Hampton* court decided, but it is an important example of an appellate court rejecting a property owner's "not my dog" defense.

PRACTICAL APPLICATION

First, all property owners should use common sense if they receive any complaint or concern about a potentially aggressive, vicious, dangerous or menacing animal being kept at any of their properties. Each situation may be unique, but there is no excuse for allowing a tenant or anyone else to keep a dog or another animal that has demonstrated any potentially harmful behavior or disposition.

Property owners should also evaluate the specific conditions at each property, particularly whether adequate fencing is in place to prevent dogs from escaping. In several of the cases discussed above, proper fencing might have prevented the attacks. When fencing is not feasible or sufficient, owners must consider alternative measures, such as using secure chains or enclosures to ensure dogs are safely restrained.

Second, all property owners should stay current on all ordinances that apply where their properties are located. Special attention should be devoted to ordinances governing how property owners must prevent dangerous, vicious or menacing animals from residing on their properties. If there is a chance such an animal is present, immediate action must be taken to remove the animal with or without its owners. Many leases include provisions making such removals or evictions possible. Property owners should be aware that conduct as simple as a dog destroying part of a fence to reach another animal or person is sufficient to render a property owner liable under ordinances in effect throughout Oklahoma City, and ignoring such situations is at their own peril. Once an owner has notice that a dog may be aggressive, dangerous, vicious or menacing (as defined by applicable ordinances or otherwise), the owner must take prompt action that is appropriate for whatever circumstances exist.

Third, property owners can take preemptive action through written lease provisions limiting the size of any animal permitted on the premises, ensuring that any dog residing with a tenant would not be large enough to inflict serious injuries to a person or another animal. However, such provisions are only effective if owners evaluate dogs that tenants seek to have on their properties. It may be time-consuming to approve such dogs, but most leases include the right to do so, and the stakes of allowing tenants to bring any dogs they desire far outweigh the burden of preventing potentially aggressive, dangerous, vicious or menacing dogs from residing at their properties. Property owners can also ban dogs of specific breeds through written leases, and it is difficult to justify allowing the types of dogs that are repeatedly involved in a majority of lethal attacks, regardless of whether many such dogs will ever attack anyone.

Last, property owners should seek information about dogs or animals that may be brought to their properties from tenants' prior landlords. This task can be added to routine verifications that occur, and it may prevent children or others from enduring brutal attacks that injure and scar them for life.

ABOUT THE AUTHOR

Keith F. Givens of Mansell & Engel has represented clients in personal injury and insurance cases for more than 30 years. In addition to litigating such matters, he has presented wide-ranging topics at numerous seminars and written articles for various publications. He also played a significant role in the creation of Oklahoma's donor registry and served as a charter member of Oklahoma's Advisory Council on Organ Donation. Mr. Givens was lead counsel in *Terrell v. Chapman, et al.* (discussed above).

ENDNOTES

1. *Bishop By and Through Childers v. Carroll*, 1994 OK CIV APP 37, 872 P.2d 407; *Eastin v. Aggarwal*, 2009 OK CIV APP 67, 218 P.3d 523; *Taylor v. Glenn*, 2010 OK CIV APP 20, 231 P.3d 765.
2. *Hampton By and Through Hampton v. Hammons*, 1987 OK 77, ¶12, 743 P.2d 1053, 1055-56.
3. *Hampton* at 1056.
4. *Hampton* at 1058.
5. *Id.*
6. Oklahoma City Code of Ordinances, 8-132. Emphasis added.
7. Oklahoma City Code of Ordinances, 8-133. Emphasis added.
8. *Terrell v. Chapman, et al.*, CJ-20-1625 (Oklahoma County).
9. *Wishon v. Hammond*, 2023 OK CIV APP 36, 538 P.3d 1197.

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Diagnosing Discovery: A Primer on Discovery in Medical Malpractice Cases

By S. Shea Bracken

IT'S OFFICIAL. YOU FILED A MEDICAL MALPRACTICE LAWSUIT and are ready to take on the world. You walk out of the courthouse with your fist triumphantly pumped into the air, just like John Bender in the iconic scene where he walks off the football field during the ending of *The Breakfast Club*. Unlike in *The Breakfast Club*, this is not the end. In fact, it is the beginning of a long journey through complex discovery in a medical malpractice lawsuit. In order to be prepared for the daunting journey that is discovery in such a complex case, the attorney needs to be familiar with documents and records to support the theory of the case and, on the other hand, objections or hurdles that can stop the discovery of important records or documents. This article is not meant to be an in-depth discussion of discovery issues in a medical malpractice lawsuit; it is, instead, a 10,000-foot view of general discovery conducted in medical malpractice lawsuits. For a more exhaustive summary of discovery in medical malpractice lawsuits, a CLE program would be an excellent resource. It is also helpful to speak with other attorneys who have litigated cases with similar medical malpractice issues because they may be able to assist with discovery requests or discovery responses.

In a medical malpractice case, a party must show 1) a duty owed by the defendant health care provider, 2) a failure to perform that duty and 3) that a plaintiff's injuries were caused by the defendant's failure.[1] In order to establish a *prima facie* case of medical negligence, a plaintiff ordinarily must have medical expert testimony.[2] A medical expert must opine that a health care worker was negligent and that such negligence caused the patient's injury.[3] For a medical expert to either support or defend a medical negligence case, the expert needs certain documents to determine what occurred during the care and treatment at issue. The key documents to obtain during discovery in a medical malpractice lawsuit are: medical records, policies and procedures, credentialing files and incident/investigation reports (incident reports). Together, these documents can help tell the story of what occurred.

Medical records are the foundation of a medical malpractice action and describe what occurred during the care and treatment at issue. Put bluntly, without medical records, one cannot prosecute or defend a medical malpractice case. The majority of medical records are currently kept electronically, and there are many nuances contained within the electronic medical record system. One could write a thesis on electronic medical

records, but part of this article will focus on the medical record audit trail/audit log or a medical provider's access to the medical record.

Policies and procedures can establish safety protocols or guidelines for health care providers to follow and can help establish how health care providers should act in certain situations. Credentialing files contain documents and information that health care facilities obtain to verify a physician or health care provider is competent to provide medical care. These files are evidence of the health care provider's training, education and experience. Lastly, incident reports can be factual summaries of an adverse event and can contain pieces of information not contained in medical records. Each of these documents is crucial in medical malpractice cases, and the parties should request and identify whether the documents exist and if the documents are relevant and discoverable.

AUDIT LOGS

Other than meeting with the patient or the health care provider, the quintessential step in a

In Oklahoma medical malpractice cases, audit logs serve as silent witnesses to the creation and modification of the medical record.

medical malpractice lawsuit is to obtain a complete set of electronic medical records. In today's health care, medical records are electronic, and because the medical records are electronic, there are numerous types and versions of medical records.[4] In fact, it is not uncommon for a patient, a patient's attorney or a representative of a hospital to all obtain a different version of the electronic medical record when a copy is requested. It gets even more complicated; beyond the legal medical record a health care facility produces in response to a medical authorization, there are numerous versions of medical records that contain metadata and all kinds of information not contained in the "legal medical record." One such example, and an important part of the medical record, is the audit log or audit trail.[5]

Audit logs are like a trail of breadcrumbs left by a medical provider in the electronic medical record system. Audit logs maintain a host of information related to medical record access events, including timestamps, user identities and the specific actions taken within a patient's chart – whether that involves viewing, editing or deleting information. When a health care provider performs an action related to a medical record, that action is maintained in the audit log. For example, if a health care provider orders a radiology exam, the audit log tracks when that health care provider orders the exam and when the health care provider reviews the radiology report from that exam. Because the audit log tracks specific actions of a medical provider, it can confirm key sequences or establish a timeline related to the care and treatment at issue. Further, audit logs are useful in establishing whether documentation was contemporaneous with patient care or altered after adverse events. These audit logs can show patterns of unusual access in a patient's medical chart or, on the flipside, can confirm a health care provider's memory of the events that occurred. Either way, the audit log helps confirm the treatment timeline.

Unfortunately, there are no Oklahoma Supreme Court or Oklahoma Court of Civil Appeals opinions regarding the discoverability of medical record audit logs. Additionally, there are no specific Oklahoma statutes governing the discovery of audit logs. Even though Oklahoma appellate courts have not directly addressed production of audit logs, many Oklahoma state district courts have heard this issue and may have orders from other medical malpractice cases to assist with how a court may handle production of audit logs. There are opinions from other state courts[6] discussing the discovery and production of audit logs in medical malpractice cases. While orders from other district courts are not binding, these orders can be helpful to support arguments for the discovery and production of audit logs.

Because there is no binding Oklahoma authority on production of audit logs, the general discovery rules[7] of relevant evidence govern the discovery of audit logs. A strong argument regarding relevance and discovery of audit logs is the federal HIPAA statute.[8] Under HIPAA, patients have a "right of access" to obtain personal health care information, and health care providers are required to maintain a patient's health care information.[9] Part of the records health care facilities are required to maintain are audit controls or a way to record and examine activity in a medical record system.[10] Notably, HIPAA does not require a specific type of audit log that a health care facility must maintain, only that the health care facility monitors the activity within a patient's health care information.[11] Therefore, it can be argued that because hospitals are required to maintain audit logs and audit logs are protected health information of a patient/plaintiff, a patient/plaintiff should be entitled to the audit log.

Typically, an audit log is not produced in response to a request for medical records with a HIPAA authorization. Therefore, the audit log must be requested and produced during discovery in a medical malpractice case. The request for the audit log can be made through

an interrogatory and a request for production. The interrogatory asks the health care facility to identify specific audit logs the medical record system maintains. The request for production requests all audit records, which include changes, deletions, access and other activity of the patient's electronic medical record. The request for the audit records needs to be a separate request from the request for a copy of the electronic medical records.

In response to the requests for audit logs, health care facilities/defendants can argue that audit logs are thousands of pages, and not all the information contained within the voluminous audit log is relevant to the specific treatment at issue. Further, it can be argued that there could be protected and privileged information contained in the audit logs, including when a hospital's attorney, risk manager and/or peer review committee reviewed information in a patient's medical record. These objections can be overcome by agreeing to limit the scope of the audit log that is requested and agreeing to redact information the health care facility is claiming a privilege.

In Oklahoma medical malpractice cases, audit logs serve as silent witnesses to the creation and modification of the medical record. While courts have yet to establish detailed precedent, Oklahoma's broad discovery rules and HIPAA's audit requirements support their use. As electronic records dominate health care, attorneys must become adept at using audit logs to test the integrity of the chart – and the credibility of those who authored it.

POLICIES AND PROCEDURES

Policies and procedures are guidelines of health care institutions to assist staff in providing safe care to patients. In the litigation context, especially in medical malpractice cases, these internal documents may establish what a hospital expects of health care providers in certain situations. For example, a hospital may have a sepsis (infection) protocol that includes a checklist of what health care providers should do when a patient is suspected of having sepsis. In medical malpractice lawsuits, policies and procedures can support a plaintiff's theory if a health care provider deviates from these guidelines or support a defense if the health care provider follows the guidelines. Therefore, these are important to obtain during discovery to provide a foundation for those claims to be litigated.

Like audit logs, there is no specific Oklahoma Supreme Court or Oklahoma Court of Civil Appeals opinion or statute about the discovery of policies and procedures in a medical malpractice case. Thus, an attorney must rely on the general rules related to the discovery of admissible evidence.[12] Additionally, like audit logs, Oklahoma state district courts that have litigated medical malpractice cases have familiarity with policies and procedures. A party should attempt to obtain prior orders from a trial judge regarding production of hospital policies and procedures.

There are federal district cases and cases from other states regarding discovery of policies and procedures that can assist with arguments regarding discovery of policies and procedures. Courts have held that policies and procedures are relevant as evidence to show what measure of caution may be exercised in certain situations.[13] But courts have cautioned that the policies and procedures alone do not set the standard of care.[14] Therefore, hospital policies and procedures may serve as evidence to show how to perform in certain situations, and if a health care provider deviates from that policy, it can be strong evidence to support negligence. Conversely, health care providers can argue these policies do not set the standard of care and are merely guidelines, and a health care provider's judgment – including training, experience and education – should prevail over a written policy.

Attorneys seeking discovery of hospital policies should be specific with requests and use targeted language. For instance, instead of requesting "all hospital policies," tailor the specific request to the issues in the lawsuit, such as "the fall prevention protocol in place for the medical-surgical unit" during the relevant time period. Another approach is to request the table of contents for the policies and procedures related to the issues in the case. For example, if the case involves labor and delivery, then the attorney can request a list of labor and delivery policies and procedures. The attorney can then identify policies and procedures on that list that are relevant to the issues in the lawsuit. Finally, a health care facility may object to policies and procedures based on trade secrets or the confidential nature of the documents. In that instance, the parties can execute protective orders to resolve confidentiality concerns.

CREDENTIALING

Credentialing medical professionals is a core component of health care administration, meant to ensure that practitioners meet

the necessary standards to practice medicine. Credentialing files typically include information related to a health care provider's qualifications, education, licensure, disciplinary history, insurance information, performance reviews and peer evaluations. Essentially, it is the way for a hospital to verify a physician is competent to provide medical care at its facility. In the context of a medical malpractice lawsuit, a plaintiff may allege that the hospital negligently credentialed or retained a provider with a known history of complications, substandard care or patients' complaints. However, to support these claims, a party will need access to credentialing documents, which can be requested through discovery.

Before a plaintiff can request a health care provider's credentialing file, they must specifically plead a negligent credentialing claim in the petition. Specifically, under the Oklahoma Peer Review statute, 63 O.S. §1-1709.1(D)(1):

> In any *civil action in which a patient* or patient's legal representative *has alleged that the health care entity was independently negligent* as a result of permitting the health care professional to provide health care services to the patient in the health care entity, *the credentialing and recredentialing data*, and the recommendations made and action taken as a result of any peer review process utilized by such health care entity regarding the health care professional prior to the date of the alleged negligence *shall be subject to discovery* pursuant to the Oklahoma Discovery Code. (Emphasis added.)

Thus, after a plaintiff pleads negligent credentialing,[15] they need to send a request for production, requesting the credentialing file of the defendant health care provider.[16] While the peer review statute allows production of credentialing data, not all documents are discoverable, and health care providers can object to production of the entire files because they can contain peer review and privileged materials – subject to the Oklahoma peer review privilege.[17] Not surprisingly, the text of the peer review statute is confusing, and it is not clear exactly which documents in a credentialing file can be withheld from discovery. Under one section of the statute, credentialing and recredentialing data are "peer review information" that is "private, confidential and privileged."[18] And in direct contrast to that section, another section states that credentialing and credentialing data are subject to discovery.[19]

This will probably be a shocker given the common theme, but there is no specific Oklahoma Supreme Court or Oklahoma Court of Civil Appeals opinion regarding discovery of credentialing files. Therefore, the parties need to be familiar with how the specific district court has previously ruled regarding the discovery of credentialing files. If a defendant health care provider objects to producing a specific portion of the credentialing file, the parties should conduct a meet and confer, and the plaintiff should request a privilege log[20] to determine the extent of the privilege and whether it applies. Further, the parties can also request the court to review the credentialing files *in camera* to determine whether the privilege applies or the documents should be produced.

As a general rule, for lack of a better word, the "administrative" credentialing materials – such as the health care provider's CV or resume, employment history, education history, training, licensure confirmations, criminal history and references – are generally discoverable. These documents confirm a hospital has done its homework to verify a health care provider is educated, trained and licensed to provide medical care. On the other hand, documents related to peer review – such as documents generated during a peer review process,[21] disciplinary decisions and/or internal evaluations – are likely privileged and not subject to discovery.[22] Also, documents and reports related to the National Practitioner Data Bank (NPDB) are confidential.[23] The NPDB is a national archive that includes reports of settlements by physicians in medical malpractice lawsuits.

With that said, there is no blanket privilege to the credentialing and peer review documents, which is why a privilege log should be requested. For example, a peer review's "recommendations made and actions taken" related to peer review of a physician's care prior to the incident at issue are discoverable. Further, there are exceptions to the peer review privilege, such as medical records and the identity of individuals with knowledge of the facts.[24]

While there is inherent privilege in the peer review process to allow health care providers to review adverse events without the fear of it being used in litigation, there is also the need for a patient to have these documents when it is alleged that a hospital negligently credentialed a physician. Thus, attorneys

need to study the credentialing and peer review statute carefully and approach discovery strategically to craft precise requests that meet the standards for production of credentialing files.

INCIDENT REPORTS

In medical malpractice litigation, access to internal hospital documents – particularly incident or investigation reports – can be essential to a plaintiff's ability to establish liability. Incident reports, often generated shortly after an adverse medical event, may contain firsthand observations, factual descriptions and sometimes admissions of error. These reports can include specific summaries of the medical care at issue that are done shortly after the unexpected event and may contain information not included in a patient's medical record. For defendant health care providers, however, these reports are viewed as sensitive documents prepared for internal quality assurance and risk management purposes and are, thus, potentially privileged or protected.

In Oklahoma, do not hold your breath, but there is no specific Oklahoma Supreme Court or Oklahoma Court of Civil Appeals decision regarding the discovery of incident reports in a medical malpractice lawsuit. However, the Oklahoma Supreme Court has provided guidance on when investigation reports can be discoverable or privileged.[25] In *Hall*, the court analyzed the distinction between investigations done in the ordinary course of business or in anticipation of litigation.[26] Without getting into the weeds of the entire opinion, the court basically held that if an investigative report was done during the ordinary course of business, it can be discoverable, whereas an investigative report prepared in anticipation of litigation or trial may not be discoverable.[27] The court provided a more in-depth analysis on this topic and cited opinions[28] from other jurisdictions to support its opinion; therefore, before a party seeks incident or investigative reports, they should read this case, along with the case citations, to become familiar with arguments related to incident reports.

In addition to the *Hall* opinion, the peer review statute can provide arguments on the discovery or privilege of incident reports. A plaintiff can argue that the peer review statute specifically carves out an exception for incident reports and factual statements.[29] However, the statute does not specifically define an incident report, and a defendant health care provider can argue that the incident report was created as part of the peer review process and is privileged.[30] As such, the plaintiff should send an interrogatory asking whether an investigation was

done, whether a report was generated and when the defendant health care provider was in reasonable anticipation of litigation.

The plaintiff should also send a request for production seeking a copy of the investigation/incident report and request a detailed and specific privilege log if a defendant objects to the production of the incident reports.[31] Plaintiffs should also request and be familiar with a hospital's policies and procedures on adverse or sentinel events[32] and investigations of unexpected outcomes. Sometimes, these policies and procedures can help with the argument of whether an investigation was done in the ordinary course of business or solely in anticipation of litigation.

In Oklahoma, there is an argument that incident reports are not categorically privileged in medical malpractice litigation. The discoverability hinges on why and how the reports were created. If a report was produced in the ordinary course of business, it is generally discoverable. If it was prepared exclusively for litigation or the peer review process, it may be shielded. Ultimately, a fact-intensive analysis of the circumstances related to the creation of the incident report should be done to ensure privilege claims. This approach ensures that anticipation of litigation and peer review protections do not become a catch-all shield for critical evidence, preserving fairness and transparency in medical malpractice proceedings.

CONCLUSION

As you walk out of the courthouse, your fist pump in the air quickly becomes a fist punch into the ground, knowing the daunting task that lies ahead in your new medical malpractice lawsuit. However, with the right preparation and knowledge of how to approach discovery, it can help lessen the burden of discovery and help you prosecute or defend the medical malpractice case so that you, too, can walk out of mediation or the courtroom like John Bender in *The Breakfast Club* with your fist held high in the air. Good luck!

ABOUT THE AUTHOR

S. Shea Bracken of Edmond focuses his practice on catastrophic injury, medical malpractice, birth injury and products liability cases with the law firm of Maples, Nix & Diesselhorst. A native of Stillwater, he is a decorated U.S. Marine Corps veteran and served on the OBA Board of Governors from 2022 to 2024.

ENDNOTES

1. *Thompson v. Presbyterian*, 1982 OK 87, ¶7, 652 P.2d 260, 263.
2. *Jones v. Mercy Health Center, Inc*., 2006 OK 83, ¶17, 155 P.3d 9.
3. *See Robinson v. Oklahoma Nephrology Associates, Inc*., 2007 OK 2, 154 P.3d 1250.
4. Helpful hint: If an attorney is not familiar with all the versions of the electronic medical record system, there are experts and companies a party can hire to assist with identifying all the specific types of electronic medical records that are available.
5. There are numerous titles for audit logs/audit trails; therefore, when requesting, a party should request audit trails, audit logs or similarly titled documents. For purposes of this article, it will be referred to as audit logs.
6. *See Gilland v. Matsuo,* 2022 WL 10360434 (Conn. 2022); and *Vargas v. Lee*, 170 A.D.3d 1073 (N.Y. 2019). The *Gilland* case cites courts from other jurisdictions that have held that audit logs are relevant and discoverable.
7. 12 O.S. §3224 *et seq.*
8. 42 U.S.C. §1320d, *et seq*.; *see also Holmes v. Nightingale*, 2007 OK 15, 158 P.3d 1039.
9. 45 C.F.R. §164.524.
10. 45 C.F.R. §164.312.
11. *See id*.
12. *See* 12 O.S. §3226.
13. *See Therrien v. Target Corp*., 617 F.3d 1242, 1256 (10th Cir. 2010).
14. *See id*.
15. *Strubhart v. Perry Mem'l Hosp. Trust Auth*., 1995 OK 10, 903 P.2d 263 is the seminal case regarding a hospital's duty to ensure competent physicians are providing care at its facility. This case can help with arguments regarding negligent credentialing.
16. Attorneys from both sides should also request the physician's licensure file from the medical board.
17. 63 O.S. §1-1709.1.
18. 63 O.S. §1-1709.1(A)(5) and 63 O.S. §1-1709.1(B)(1).
19. 63 O.S. §1-1709.1(D)(1).
20. *See* 12 O.S. §3226(B)(5); *see also* 12 O.S. §3237(A)(2).
21. Peer review is a privileged process that typically involves an internal committee or health care provider that reviews and evaluates a physician's performance to evaluate the quality of care provided to a patient. The committee will review medical records, conduct interviews and review other documents and, based on the committee's evaluation, will provide what is known as recommendations made and actions taken related to the care and treatment that was reviewed. *See* 63 O.S. §1-1709.1(A)(6).
22. 63 O.S. §1-1709.1(B)(1).
23. 45 C.F.R. §60.20(a).
24. 63 O.S. §1-1709.1(A)(5)(a-f).
25. *Hall v. Goodwin*, 1989 OK 88, 775 P.2d 291.
26. *See id*.
27. *See id*. at ¶12.
28. *See id*. at ¶¶8-11.
29. 63 O.S. §1-1709.1(A)(5)(b and d).
30. 63 O.S. §1-1709.1(C).
31. *See supra* footnote 19.
32. Sentinel events are events that result in a patient's death or permanent harm. *See* "Joint Commission Policy on Sentinel Events," http://bit.ly/46KbW26.

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Is Your Law Firm Compliant With Title III of the Americans With Disabilities Act?

A Practical Guide for Legal Professionals

By Angie Barker

AS ATTORNEYS, WE SPEND countless hours ensuring our clients comply with laws and regulations. But many law firms overlook their obligations as service providers under the Americans with Disabilities Act (ADA).[1] This oversight represents not only a potential legal liability but also a missed opportunity to overtly demonstrate our profession's commitment to equal access to justice. Title III of the ADA,[2] which prohibits discrimination on the basis of disability in places of public accommodation, applies directly to law firm offices. It creates specific obligations every law firm must understand and properly implement.[3]

Our profession has a unique responsibility to model compliance with civil rights legislation. But when law firms fail to provide accessible facilities, they create barriers that prevent individuals with disabilities from obtaining legal representation, consulting with attorneys or participating in office-based legal proceedings. This article examines the specific Title III requirements that apply to law firm offices – focusing on practical compliance strategies for parking lots, building entrances, reception areas, restrooms and conference rooms.

UNDERSTANDING TITLE III'S APPLICATION TO LAW FIRMS

Unlike Title I, which addresses employment discrimination, or Title II, which applies to federal, state and local government services, Title III specifically governs public accommodations operated by private entities.

The scope of Title III extends beyond mere physical accessibility. In general, the statute requires that "goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."[4]

Title III of the ADA defines places of public accommodation broadly to include "office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment."[5] Given that a lawyer's office is specifically mentioned, the question as to whether a law firm's office falls under Title III of the ADA is a settled matter.

Unfortunately, not every attorney or law firm understands or adheres to the statute. In 2010, the Department of Justice (DOJ) brought an action against attorney Patric LeHouillier and his law firm, LeHouillier & Associates PC, located in Colorado Springs, Colorado. The DOJ claimed Mr. LeHouillier violated the civil rights of the opposing counsel's client (who fit the definition of disabled under the ADA) by denying her entry to his law office for a deposition being conducted in his firm's conference room. The matter culminated in a consent decree replete with obligations, remedial actions, monetary relief and civil penalties against Mr. LeHouillier

and his law firm.[6] The parties and the court agreed that both Mr. LeHouillier[7] and his law office[8] were places of public accommodation covered by Title III of the ADA.

This example demonstrates that ensuring your clients, employees and anyone else invited into your law firm can access not only the physical premises but also the full range of legal services offered by your firm applies to both lawyers and law firms.

COMPLIANCE: KEY OBLIGATIONS

Law firms must comply with both the general provisions of Title III and the specific architectural standards of the 2010 ADA Standards for Accessible Design (2010 standards).[9] These obligations include, but are not limited to:

- Removal of Architectural Barriers: Law firms must remove architectural barriers in existing facilities where such removal is "readily achievable," meaning easily accomplishable without much difficulty or expense.[10] Determining whether barrier removal is readily achievable is made on a case-by-case basis by considering the specific nature and cost of the removal, the overall resources of the business and other relevant factors. This requirement is ongoing and must be reassessed as circumstances change. Additional factors required in new construction are not discussed in this article.
- Policy Modifications: Law firms must make reasonable modifications to policies, practices and procedures when necessary to provide equal access, unless the law firm can demonstrate that such modifications would fundamentally alter the nature of the services provided.[11]
- Audiovisual and Remote Services: Law firms must provide appropriate services to ensure effective communication with employees and clients who have hearing, vision or speech disabilities.[12] This includes accessible websites and documents in accessible formats.

PARKING FACILITIES: THE FIRST POINT OF ACCESS

Accessible parking represents the initial compliance challenge for many law firms, yet it is often the most visible indicator of a firm's commitment to accessibility. In guidance provided for the 2010 standards, the term "facility" is used to include both parking lots and parking structures. The 2010 standards also establish specific quantity and technical requirements.

Quantity Requirements

For parking facilities, the number of required accessible spaces follows a precise formula:

- One to 25 spaces: One accessible space is required
- 26 to 50 spaces: Two accessible spaces are required
- 51 to 75 spaces: Three accessible spaces are required
- 76 to 100 spaces: Four accessible spaces are required
- 101 to 150 spaces: Five accessible spaces are required
- 151 to 200 spaces: Six accessible spaces are required
- 201 to 250 spaces: Seven accessible spaces are required
- 301 to 400 spaces: Eight accessible spaces are required
- 401 to 500 spaces: Nine accessible spaces are required
- 501 to 1,000 spaces: 2% of the total parking spaces
- 1,001 and over: 20 accessible spaces plus one for each additional 100 spaces, or fraction thereof, over 1,000[13]

Note: One of every six accessible spaces must be van accessible, with a minimum of one van-accessible space required, regardless of the total number of accessible spaces provided.[14]

Technical Specifications

Accessible parking spaces must meet specific dimensional requirements. Standard accessible spaces must be at least 96 inches wide with an adjacent access aisle at least 60 inches wide.[15] Van-accessible spaces require a minimum width of 132 inches when adjacent to an access aisle of at least 60 inches. Alternatively, van-accessible spaces can have a minimum width of 96 inches if the adjacent access aisle is also a minimum width of 96 inches.[16] The access aisle must be part of an accessible route to the building entrance and must be marked (striped) to discourage parking.[17]

The parking surface must be stable, firm and slip resistant, with a slope not exceeding 1:48 (roughly 2%) in any direction.[18]

Proper signage is mandatory, with signs displaying the international symbol of accessibility mounted at least 60 inches above the ground.[19] Van-accessible spaces require additional signage indicating "Van Accessible."[20]

Note: For parking spaces, several states and even some municipalities have technical requirements in their building codes that are greater than the minimum standards required by the ADA. If your state or municipality falls in this category, follow the more stringent requirement. In general, specific provisions that offer additional protections to people with disabilities override those that are less protective.

Common Compliance Issues

Many law firms encounter problems with parking compliance due to several recurring issues. Inadequate maintenance of accessible spaces, such as allowing debris accumulation or failing to repair surface damage, can render parking spaces unusable. Improper signage placement or missing van-accessible designations are frequent violations discovered during compliance reviews.

Perhaps most problematic, some firms attempt to designate accessible spaces in locations that do not provide the shortest distance to the accessible entrance of the building. The 2010 standards require that accessible parking spaces be located on the shortest accessible route from the parking space(s) to the accessible entrance.[21] This means that accessible spaces cannot be relegated to remote areas of parking facilities.

BUILDING ENTRANCES: ENSURING ACCESS

The entrance of a law firm sets the tone for client relationships

and must comply with specific accessibility requirements. Title III requires that all new construction and new alterations provide accessible entrances, while existing structures must remove barriers where readily achievable, and it gives several examples to consider.[22]

Door and Doorway Requirements

In general, door openings must provide a minimum clear width of 32 inches, as measured when the door is open to 90 degrees.[23] The 2010 standards provide technical specifications for nearly every type of door and approach possible. Those specifications can be found in its various figures and tables.[24] Along with approach, maneuvering space is a necessary consideration. These specifications can also be found in the above-referenced figures and tables.

Door hardware presents another critical compliance area. Handles, pulls, latches, locks and other operating hardware must "be operable with one hand and shall not require tight grasping, pinching, twisting of the wrist."[25] Lever-style handles generally meet this requirement, while round doorknobs almost exclusively do not.

The force required to open an entrance door is also a factor that should be considered. "The force required to activate operable parts shall be 5 pounds (22.2 N) maximum."[26]

Threshold and Surface Requirements

"Thresholds, if provided at doorways, shall be 1/2 inch (13 mm) high maximum."[27] The standards allow for an exception in existing or altered thresholds. Those may be a maximum of three-fourths inch high if they also have a beveled edge on each side that is not steeper than 1:2.[28]

The area immediately inside and outside of each door must have a level landing with specific dimensional requirements. Generally, the landing must extend at least 18 inches beyond the latch side of the door to allow for adequate maneuvering space.[29]

Floor surfaces at entrances to and throughout the interior of the law firm must be stable, firm and slip resistant.[30] These seemingly minor details can make the difference between independence and dependence for clients with mobility impairments.

Additional Entrance Considerations

Law firms with multiple public entrances must carefully consider which entrances are accessible. While not every public entrance must be accessible, at least one accessible entrance must be provided.[31] For ground-floor law offices, this typically means ensuring that the primary entrance is accessible. Best practices dictate making the primary entrance accessible whenever possible to avoid creating separate and potentially stigmatizing situations.

RECEPTION AREAS: CREATING ACCESSIBLE SPACES

Law firm reception areas serve multiple functions beyond simply being a client accommodation. They project the firm's professional image, provide space for completing intake forms and often serve as the initial interface between a firm and its clients. Title III requirements for reception areas focus on ensuring that these spaces serve all clients equally.

Seating and Clear Floor Space

To the maximum extent feasible, reception areas should provide wheelchair-accessible seating options or designated clear floor[32] space that can accommodate a wheelchair. It is important to arrange the reception area to provide adequate clear floor space for employees and clients who are wheelchair users to maneuver on a path of travel to other areas of the firm intended for their use.

Reception Service Counter Access

Service counters in reception areas must be accessible to individuals using wheelchairs.[33] Alternative accommodations may include providing a nearby accessible surface for writing or document review or ensuring that staff can move to an accessible location to interact with clients who use wheelchairs. However, these alternatives should supplement – not replace – accessible counter design. Again, consider whether these alternatives might cause a client to feel stigmatized.

RESTROOM ACCESSIBILITY: MEETING ESSENTIAL NEEDS

Accessible restrooms are among the most technically complex areas of ADA compliance, yet they are essential for ensuring that clients and employees with disabilities can comfortably use law firm facilities. The 2010 standards provide extremely detailed specifications that address the needs of individuals with various types of mobility impairments when using public restrooms.

Note: Specific exceptions apply to several of the requirements discussed herein.

Single-User Restroom Requirements

Many law firms provide single-user restrooms. As discussed earlier, entrance doors must provide at least 32 inches of clear width and must be operable with hardware that does not require tight grasping or twisting. Door swing space should not overlap with the clearance required for any fixture (sink, urinal, etc.), but doors are allowed to swing into the required turning space.[34] Clear floor space within the restroom must be at least 30 inches by 48 inches to accommodate wheelchair maneuvering.[35]

Multi-User Restroom Considerations

If your firm offers multi-user restroom facilities, ensure that at least one toilet stall in each restroom is accessible and follows all guidelines for door width, door swing, maneuvering space, clear floor space and toe clearance. These detailed specifications can be found in Chapter 6 of the 2010 standards.[36]

Toilet and Grab Bar Technical Specifications

Toilets must be positioned with the centerline between 16 and 18 inches from the side wall.[37] The height of the toilet seat must be between 17 and 19 inches above the finished floor.[38] These specifications ensure that individuals can transfer from wheelchairs to the toilet with appropriate positioning and leverage.

Grab bars are mandatory and must meet specific installation requirements for circumference, shape, location and distance. These specifications can also be found in Chapter 6 of the 2010 standards.[39] Grab bars must be capable of supporting 250 pounds of force.[40] This specification often requires that blocking be installed behind the wall surface to ensure proper mounting is achieved.

Sink and Mirror Technical Specifications

Accessible sinks must have a rim no higher than 34 inches above the finished floor.[41] Knee clearance must be provided underneath the sink, and hot water pipes and drainpipes must be insulated or configured to protect against contact injuries and scalding.[42]

Mirrors located above sink and faucet areas must be mounted with the bottom edge of the reflective surface no higher than 40 inches above the finished floor.[43] This allows individuals seated in wheelchairs to use the lavatory mirror effectively. Dispensers (soap, paper towels, etc.) and other accessories must be located within accessible reach ranges (48 and 54 inches, depending on approach) and must be operable with one hand without tight grasping or twisting.[44]

CONFERENCE ROOMS: ACCESSIBILITY CONSIDERATIONS

Conference rooms present unique accessibility challenges for law firms, as these spaces must accommodate not only employees and clients with mobility impairments but must also ensure effective and confidential communication during client meetings. The conference room should be located along an accessible route.

Table and Seating Accessibility

Conference room tables must provide accessible seating positions that have adequate knee clearance, and the table height should be between 28 and 34 inches above the finished floor.[45] Conference rooms must also provide adequate maneuvering space to comply with seating.

Audiovisual and Communication Equipment Considerations

Many law firms use audiovisual equipment in conference rooms for presentations, video depositions and remote consultations. This equipment must be accessible to employees and clients with disabilities. Often, it is as simple as using closed captioning or large print documentation in a sans serif font.

COMPLIANCE: STRATEGIES AND RISK MANAGEMENT

Effective Title III compliance requires a proactive approach that integrates accessibility considerations into all aspects of law firm operations. Compliance should not be viewed as a one-time project but as an ongoing commitment that evolves with changes in technology, regulations and the firm's physical space.

Conducting Accessibility Audits

Regular accessibility audits provide the foundation for effective compliance. These audits should be conducted by qualified professionals who understand the technical requirements of the ADA standards, the practical needs of individuals with disabilities and the operational needs of law firms. Audits should address not only architectural barriers but also policies, procedures, communication and digital presence.

The auditor should include a consultation with individuals with disabilities who can provide practical insights into the usability of the firm's facilities and services. This consultation can reveal barriers that might not be apparent from a purely technical review of the 2010 standards.

Developing Remediation Plans

When accessibility barriers are identified, law firms must develop prioritized remediation plans, also known as transition plans, that address the most significant barriers first. The readily achievable standard requires ongoing assessment of what barrier removal is feasible as the firm's resources and circumstances change.

Remediation or transition plans should include specific timelines, budget allocations and responsibility assignments. Plans should also address interim accommodations that can be provided while permanent barrier removal is being implemented.

Staff Training and Policy Development

All law firm staff who interact with clients should receive training on accessibility awareness and appropriate interaction with individuals with disabilities. This training should address both legal requirements and practical considerations for providing effective and considerate client services.

Firm policies should clearly articulate the firm's commitment to accessibility and should provide specific procedures for handling accommodation or modification requests from employees and clients. These policies should be regularly reviewed and updated to reflect changes in best practices, regulations and technology.

MOVING FORWARD: EMERGING ISSUES AND CONSIDERATIONS

The landscape of ADA compliance continues to evolve, with new technologies and changing work patterns creating both opportunities and challenges for law firms seeking to maintain accessible facilities and services.

Technology Integration

Modern law firms increasingly rely on technology for client services, from online consultation platforms to electronic document management systems. While these technologies can enhance accessibility for some individuals with disabilities, they can also create new barriers if not properly designed and implemented.

Inaccessible websites are as exclusionary to online clients with disabilities as steps leading to the entrance of your law firm are to physical clients with disabilities. Law firms should ensure that their websites comply with applicable accessibility standards, such as the Web Content Accessibility Guidelines (WCAG).[46] To do this, consider the typical factors that create accessible websites: proper text size, text/background color and contrast, alternative text for image description, captioning for videos, accessible online documents and keyboard (rather than mouse-only) navigation.

Cases and Settlements Worth Noting

While this article's focus is on ADA compliance in physical spaces, law firms should not ignore their digital presence. The DOJ continues to take steps to enforce online accessibility not only under Title II but also under Title III of the ADA. While the DOJ established WCAG 2.1 Level AA[47] as the standard for Title II compliance, it promotes following the technical standards for web accessibility in private businesses. In its effort to enforce digital accessibility, the DOJ has entered into settlement agreements with companies such as Rite Aid Corp., Teachers Test Prep Inc., H&R Block and Peapod LLC because their respective websites were found to discriminate against people with disabilities. What do these four companies have in common? They maintain an online presence *in addition to* their physical spaces.

In contrast to the aforementioned settlement agreements, the U.S. District Court for the Southern District of New York

recently held that a web-only business was not subject to Title III requirements.[48] The key fact in the court's decision was that the business in question did not maintain a physical space; the court acknowledged that a majority of other district courts have held that a website is a place of public accommodation only if it is connected to a physical location. This is an important point to consider if your firm is purely virtual, but it should not be used as an excuse to ignore accessibility compliance.

The majority of law firms maintain both physical spaces and publish websites and, therefore, fall under the requirements of Title III. Regardless, maintaining ADA-compliant websites is the prudent decision, and all law firms should strive to achieve and maintain WCAG 2.1 compliance to mitigate legal risk.

CONCLUSION

ADA Title III compliance represents both a legal obligation and a professional opportunity for law firms. By creating accessible facilities, services and websites, law firms demonstrate their commitment to equal justice and expand their ability to serve all members of their staff and communities.

Effective compliance requires ongoing attention to both technical specifications and practical usability. Law firms should view accessibility not only as a legal requirement but as an integral part of professional excellence. The investment in accessibility pays dividends in terms of employee and client satisfaction, risk management and professional reputation.

As the legal profession continues to evolve, accessibility must remain at the forefront of facility planning, technology adoption and service delivery. Law firms that embrace this challenge will find themselves better positioned to serve their staff and communities and fulfill our profession's commitment to accessible justice for all.

The path to full accessibility may seem complex, but the destination is clear: law offices that welcome all clients with dignity and provide equal access to legal services. This goal is not only required by state and federal law but is demanded by the principles of justice that define the legal profession itself.

ABOUT THE AUTHOR

Angie Barker is an accessibility rights attorney, consultant and adjunct professor with over 20 years of ADA compliance and fair housing advocacy experience. Her practice spans employment, premises liability, housing law, construction compliance, veterans' rights, elder law and education law – anywhere the ADA touches. Ms. Barker's unique experience as both a legal practitioner and an ADA consultant enables her to identify architectural barriers, policy failures and regulatory violations. She teaches real estate and property law at Rose State College.

ENDNOTES

1. Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq*. (1990).
2. 42 U.S.C. §12101 *et seq.*
3. 42 U.S.C. §12182(a).
4. 42 U.S.C. §12182(a).
5. 42 U.S.C. §12181(7)(F).
6. Consent Decree, *U.S. v. LeHouillier*, 1:09-cv-02582-MSK-MEH (D. Colo. April 5, 2010) [hereinafter Consent Decree (*LeHouillier*)].
7. 42 U.S.C. §12181(7)(F); 28 C.F.R. §36.104.
8. 28 C.F.R. §36.104.
9. U.S. Department of Justice, Civil Rights Division, 2010 ADA Standards for Accessible Design, 40 P.S.G. 5673 (U.S. Dept. of Justice, Civ. Rights Div., 2010).
10. 28 CFR 36.304(a).
11. 42 U.S.C. §12182(b)(2)(A)(ii).
12. 42 U.S.C. §12182(b)(2)(A)(iii).
13. 2010 ADA Standards §208.2.
14. *Id.* at 2.4.
15. *Id.* at §502.2.
16. *Id.* at §502.2.
17. *Id.* at §502.3.3.
18. *Id.* at §502.4.
19. *Id.* at §502.6.
20. *Id.*
21. *Id.* at §208.3.1.
22. 28 C.F.R. §36.304(a) and (b).
23. 2010 ADA Standards §404.2.3.
24. *Id.* at §404.2.3-404.2.4.3.
25. *Id.* at §309.4.
26. *Id.*
27. *Id.* at §404.2.5.
28. *Id.*
29. *Id.* at §404.2.4.1.
30. *Id.* at §302.1.
31. *Id.* at §204.4.1.
32. 28 C.F.R. §35.151(b)(4)(ii)(A).
33. 2010 ADA Standards §904.1.
34. *Id.* at §603.2.3.
35. *Id.* at §305.3.
36. *Id.* at §600.
37. *Id.* at §604.2.
38. *Id.* at §604.4.
39. *Id.* at §609.
40. *Id.* at §609.8.
41. *Id.* at §606.3.
42. *Id.* at §606.5.
43. *Id.* at §603.3.
44. *Id.* at §604.7.
45. *Id.* at §902.3.
46. W3C World Wide Web Consortium, *Web Content Accessibility Guidelines 2.1*, (May 31, 2025, 4:32 p.m.), www.w3.org/TR/WCAG21.
47. *Id.*
48. *Mejia v. High Brew Coffee Inc.*, No. 1:2022cv03667 – Document 33 (S.D.N.Y. 2024).

ETHICS COUNSEL

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

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Shape the Future of the Bar

Apply To Join the 2026 OBA Leadership Academy

By Gigi McCormick

IF YOU'VE BEEN LOOKING for an opportunity to sharpen your leadership skills and create connections, now is the time! Applications will open Sept. 15 for the ninth class of the OBA Leadership Academy. Since 2008, this program has equipped participants with the skills and connections to be leaders not only within the bar but also in their local communities and beyond.

BUILDING TOMORROW'S BAR LEADERS

Originating from the OBA's Leadership Conference in 2007, the OBA Leadership Academy focuses on equipping participants with the skills and network connections to become leaders within the bar as well as their local communities. The comprehensive program provides participants with invaluable insights into OBA governance, special considerations for attorneys in public service, networking strategies and effective communication techniques.

The Leadership Academy represents more than professional development – it's an investment in the future of Oklahoma's legal profession. Over the past eight classes, graduates have gone on to assume leadership roles within the OBA and their communities, demonstrating the program's effectiveness in cultivating the next generation of legal leaders.

Retired Justice Yvonne Kauger gives the class a tour of the Oklahoma Judicial Center, providing a history of the center and discussing the artwork hanging throughout the building.

WHAT PARTICIPANTS CAN EXPECT

The Leadership Academy follows a structured format designed to maximize learning and networking opportunities. Participants attend multi-day sessions throughout the year, combining educational content with evening networking events. The program culminates with attendance at the OBA Annual Meeting, providing participants with first-hand exposure to the association's governance process.

Based on previous years' schedules, participants can expect approximately six sessions from January through November, with most events held in Oklahoma City. Each session typically includes both day-long educational components and evening networking activities, ensuring participants build meaningful professional relationships alongside their skill development.

A TRANSFORMATIVE PROFESSIONAL EXPERIENCE

The Leadership Academy goes beyond traditional continuing

Above: *The eighth class of Leadership Academy gather for their first meeting at the Oklahoma Bar Center.*

Left: *Director of Educational Programs Gigi McCormick addresses the Leadership Academy class.*

legal education by focusing on leadership development and professional growth. Participants gain exposure to diverse perspectives within the legal profession, learn from experienced practitioners and leaders and develop skills that extend well beyond their legal practices.

The networking component proves particularly valuable, as participants build relationships with peers from across Oklahoma who share a similar commitment to professional excellence and community service. These connections often lead to ongoing collaborations, referrals and lifelong professional friendships.

ELIGIBILITY AND APPLICATION REQUIREMENTS

If you've ever been interested in stepping up and honing your leadership skills, you're encouraged to apply. The selection process is competitive as the program maintains a manageable class size to ensure meaningful interaction and personalized attention for each participant. Applicants must meet several key requirements:

- Must be a member in good standing with the OBA
- Must be able to attend all sessions in their entirety
- Applicants should demonstrate a commitment to the profession and community impact

All attorneys may apply, but preference will be given to those who are members of the OBA Young Lawyers Division, reflecting the program's focus on developing emerging leaders in the profession.

The ninth class of the OBA Leadership Academy represents an outstanding opportunity for committed attorneys to enhance their leadership capabilities while contributing to the continued excellence of Oklahoma's legal profession. Don't miss this chance to join a distinguished group of legal professionals dedicated to advancing the bar and serving their communities.

For more information about the Leadership Academy and to access the application when it becomes available Sept. 15, visit http://bit.ly/3JiSxeO. Questions about the program can be directed to the OBA at 405-416-7000.

Ms. McCormick is the OBA Director of Educational Programs. She can be reached at gigim@okbar.org.

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Oklahoma Bar Association,
Oklahoma Access to Justice Commission
and American Bar Association

2025 Oklahoma Bar Association

Annual Meeting

Nov. 6-7 | Sheraton Oklahoma City Downtown Hotel

2025 Oklahoma Bar Association Annual Meeting

2026 OBA BOARD OF GOVERNORS VACANCIES

Nominating Petition Deadline: 5 p.m. Monday, Sept. 8

OFFICERS

President-Elect
Current: Amber Peckio, Tulsa
(One-year term: 2026)
Ms. Peckio automatically becomes OBA president Jan. 1, 2026
Nominee: **John E. Barbush, Durant**
Nominee: **Jana L. Knott, El Reno**

Vice President
Current: Richard D. White Jr., Tulsa
(One-year term: 2026)
Nominee: **S. Shea Bracken, Edmond**

BOARD OF GOVERNORS

Supreme Court Judicial District 2
Current: John E. Barbush, Durant
Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties
(Three-year term: 2026-2028)
Nominee: **Chris D. Jones, Durant**

Supreme Court Judicial District 8
Current: Nicholas E. Thurman, Ada
Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties
(Three-year term: 2026-2028)
Nominee: **Vacant**

Supreme Court Judicial District 9
Current: Jana L. Knott, El Reno
Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties
(Three-year term: 2026-2028)
Nominee: **Vacant**

Member at Large
Current: Timothy L. Rogers, Tulsa
Statewide
(Three-year term: 2026-2028)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting 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.

Vice President
S. Shea Bracken, Edmond

Nominating petitions have been filed nominating S. Shea Bracken, Edmond, for vice president 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:

Kate Naa-Amoah Dodoo, Jana Lee Knott, Taylor Christian Venus, Chad Alexander Locke, Philip D. Hixon, Benjamin James Barker, Cody Jarrett Cooper, John Eric Barbush, William Ladd Oldfield, Amber Nicole Peckio, Jeffery Darnell Trevillion, Perry Luther Adams, Shiny Rachel Pappy, Alison Ann Cave, Brenda Lyda Doroteo, Sherman Travis Dunn, Craig W. Thompson, Brent Andrew Hawkins, Allison Joanne Martuch, Justin Don Meek, Cody Austin Reihs, Ryan Lee Dean, John Derek Cowan, Thomas Andrew Paruolo, Derrick Lee Morton, Ismail Marzuk Calhoun, Michael Patrick Garcia, Kenneth Glenn Cole, Kyle Reed Prince, Joseph Pickett Dowdell, Myriah Seyon Downs, Timothy Lee Martin, Benjamin Ryan Grubb, Jacob Travis Sherman, Daniel Reading Ketchum II, John Frederick Kempf Jr., Ashley Ann Warshell, Jon Michael Payne, Mason Blair McMillan, Mark Banner, Pamela Sue Anderson, Pamela H. Goldberg, Dale Kenyon Williams Jr., Margo Elizabeth Shipley, Taylor Rose Bagby, Kristen Pence Evans, Jerrick L. Irby, Bryan Joseph Nowlin, Logan Lawrence James and Christopher Joe Gnaedig.

A total of 62 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District 2
Chris D. Jones, Durant

A nominating resolution has been filed by one county bar association nominating Chris D. Jones, Durant, for election of Supreme Court Judicial District No. 2 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2026. The association is set forth below:

Bryan County Bar Association

LOOKING FOR AN OKLAHOMA BAR JOURNAL ARTICLE?

HeinOnline provides OBA members access to archived *Oklahoma Bar Journal* issues and articles dating back to 1930. You can view, print or save as a PDF any article or an entire issue, as well as use the easy search tools to find the article, topic or author you need.

Access it by clicking the red HeinOnline link on your main MyOKBar page.

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2025 Oklahoma Bar Association Annual Meeting

2025 HOUSE OF DELEGATES

Delegate certification should be sent as soon as possible to Mark Schneidewent at marks@okbar.org or 405-416-7014. The list below was up to date as of the time of press.

COUNTY	DELEGATE	ALTERNATE
Adair Co.		
Alfalfa Co.		
Atoka Co.		
Beaver Co.	Christopher Todd Trippet	Cole Jordan Trippet
Beckham Co.		
Blaine Co.		
Bryan Co.	Christopher Dwight Jones	Haley Renee Cook
Caddo Co.		
Canadian Co.		
Carter Co.		
Cherokee Co.		
Choctaw Co.	John Frank Wolf III	Jon Edward Brown
Cimarron Co.	Judge Christine Marie Larson	Judge Ronald L. Kincannon
Cleveland Co.		
Coal Co.		
Comanche Co.	Kathryn Rodgers McClure	Kade A. McClure
	Tyler Christian Johnson	Ana Hernandez Basora
Cotton Co.		
Craig Co.		
Creek Co.		
Custer Co.		
Delaware Co.		
Dewey Co.		
Ellis Co.		
Garfield Co.		
Garvin Co.		
Grady Co.		
Grant Co.		
Greer Co.	Judge Eric Grant Yarborough	Corry Kendall
Harmon Co.		
Harper Co.		
Haskell Co.		
Hughes Co.		
Jackson Co.	Brian David Bush	Preston Michael Gunkel
Jefferson Co.		
Johnston Co.		
Kay Co.		
Kingfisher Co.	Jonathan Ford Benham	Katherine Ann Schneiter

COUNTY	DELEGATE	ALTERNATE
Kiowa Co.		
Latimer Co.		
Le Flore Co.		
Lincoln Co.		
Logan Co.		
Love Co.		
Major Co.		
Marshall Co.		
Mayes Co.		
McClain Co.		
McCurtain Co.		
McIntosh Co.		
Murray Co.		
Muskogee Co.		
Noble Co.		
Nowata Co.		
Okfuskee Co.		
Oklahoma Co.		
Okmulgee Co.		
Osage Co.		
Ottawa Co.		
Pawnee Co.		
Payne Co.		
Pittsburg Co.		
Pontotoc Co.	Nicholas Edwin Thurman Austin Ryan Little	Ethan Lee Byrd
Pottawatomie Co.		
Pushmataha Co.		
Roger Mills Co.		
Rogers Co.		
Seminole Co.		
Sequoyah Co.		
Stephens Co.		
Texas Co.		
Tillman Co.		
Tulsa Co.		
Wagoner Co.		
Washington Co.		
Washita Co.	Avery A. “Chip” Eeds Jr.	Judge Stephanie Brooke Gatlin
Woods Co.		
Woodward Co.		

	DELEGATE	ALTERNATE
Oklahoma Judicial Conference	Dist. Judge Stuart Lee Tate	Dist. Judge Natalie Nhu Mai
	Assoc. Dist. Judge Russell Coleman Vaclaw	Dist. Judge Abby Carol Rogers
	Special Judge Deborah Ann Reheard	Special Judge Tina Diane Vaughan

PAST PRESIDENTS – DELEGATES AT LARGE

William J. Baker	James Rouse Hicks
Stephen D. Beam	Garvin Isaacs Jr.
Michael Burrage	Michael Charles Mordy
Charles W. Chesnut	Charles Donald Neal Jr.
Cathy M. Christensen	Judge Jon Keith Parsley
Gary Carl Clark	David K. Petty
Andrew M. Coats	David Allen Poarch Jr.
M. Joe Crosthwait Jr.	Miles Pringle
Melissa Griner DeLacerda	Judge Deborah Ann Reheard
Renee DeMoss	Douglas W. Sanders Jr.
Sidney George Dunagan	Susan Stocker Shields
John A. Gaberino Jr.	Allen M. Smallwood
William Robert Grimm	James Thomas Stuart
Kimberly Hays	Judge Linda Suzanne Thomas
Brian T. Hermanson	Paul Miner Vassar

ONE ASSOCIATION MANY OPPORTUNITIES

JOIN AN OBA COMMITTEE TODAY!

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

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

Women in Law CONFERENCE

& Mona Salyer Lambird

SPOTLIGHT AWARDS LUNCHEON

Keynote Speaker:

DG SMALLING

presenting Operation Lady Justice

Friday, September 19, 2025

DOWNTOWN OKLAHOMA CITY PETROLEUM CLUB

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WOMEN IN LAW

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ESTILL
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CARNS CURTISS LAW, PLLC

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BAYSINGER & GREEN, LLP
established in 1923

WILLIAM
&LAUREN

2025 Mona Salyer Lambird Spotlight Award Winners Honored

Since 1996, Spotlight Awards have been given to five women every year who have distinguished themselves in the legal profession and have lit the way for other women. In 1998, the award was named to honor the late Mona Salyer Lambird, the first woman OBA president and one of the award's first recipients. The award is sponsored by the OBA Women in Law Section. Each year, all previous winners nominate and select the current year's recipients. A plaque bearing the names of all recipients hangs in the Oklahoma Bar Center in Oklahoma City. This is the 29th year of award presentations. Recipients will be honored during the Women in Law Conference on Sept. 19 in Oklahoma City. For more information about the conference, visit www.okbar.org/wil.

Jennifer R. Annis

Jennifer R. Annis graduated from the OU College of Law in 1998 and joined the law firm then known as Atkinson, Haskins, Nellis, Holeman, Phipps, Brittingham & Gladd, where she developed her skills as a trial lawyer, primarily defending medical malpractice actions. In 2022, she became a shareholder in the Tulsa office of GableGotwals, representing both corporate and individual clients in a wide range of industries, including health care, insurance, construction, engineering and energy.

An experienced trial attorney, Ms. Annis is a member of the American Board of Trial Advocates, a Fellow of the American College of Trial Lawyers and a Fellow of the International Academy of Trial Lawyers. She is a member of the International Association of Defense Counsel and DRI. She has been an active member of the Oklahoma Association of Defense Counsel, serving on the Board of Directors from 2009-2016 and was the OADC president in 2014.

In addition to her professional achievements, Ms. Annis is civic-minded and community oriented. She has served Special Olympics Oklahoma for more than 20 years as a member of the Board of Directors and has been elected to its Executive Committee for the past 12 years. Additionally, she has held several leadership roles at Harvard Avenue Christian Church.

She is married to Bill Largess, and they have three daughters: Kimberly, Maggie and Olivia.

Virginia Henson

Virginia (Ginny) Henson is a sole practitioner in Norman who practices mainly family law. She received her J.D. from the OU College of Law in 1979. She has held numerous leadership positions in the OBA Family Law Section, including chair. She has been an editor of the *Oklahoma Family Law Section Practice Manual* since 2006.

Ms. Henson assumed the update responsibilities for the *Oklahoma Family Law Handbook*, created by Professor Robert Spector in 2023. She is an adjunct professor of family law at the OU College of Law and has served on the Board of Editors of the *Oklahoma Bar Journal*.

She received the OBA Golden Quill Award for best *Oklahoma Bar Journal* article in 2020. She has twice been named the Oklahoma Outstanding Lawyer. She is also a member of the American Academy of Matrimonial Lawyers.

Ms. Henson has presented extensively in continuing legal education for the American Bar Association, the Oklahoma Bar Association and its Family Law Section, the Tinker Air Force Base JAG and numerous county bar associations.

Cheryl Plaxico

Cheryl Plaxico is passionate about the practice of law. She is realizing her childhood dream of being a lawyer. That aspiration came about from her observations of three lawyers from the "Greatest Generation": her neighbor, retired Judge Donald Worthington, and family friends Clee Fitzgerald and Winfrey Houston. Those three attorneys personally encouraged her ambition and, by their actions, demonstrated the profound positive impact lawyers could have on their communities and society as a whole.

Ms. Plaxico is now in her 43rd year of achieving her youthful aim and has maintained the passion for the practice she has had from inception. While her law practice has always been focused on business or commercial law, she is unique in not only representing clients in complex commercial litigation but also in a broad range of commercial transactions. She has also been honored to represent clients in defending their religious freedoms and was proud to provide pro bono counsel to the Oklahoma Statewide Charter School Board in a case that was recently heard by the United States Supreme Court.

Ms. Plaxico has been a leader in Oklahoma state and county bar associations and is a member and past president of the Luther Bohanon chapter of the American Inns of Court, on whose Executive Board she currently serves. Prior to forming Plaxico Law Firm PLLC, she was a partner in several medium-sized firms and a large law firm, where she served on the Board of Directors.

Public service has been a very important part of her career. Among other things, she served a three-year term as chair of the Oklahoma Indigent Defense System (OIDS), beginning when the failures documented in John Grisham's book, *The Innocent Man,* existed and quickly led a turnaround to a system that appropriately fulfilled the accused's Sixth Amendment right to counsel, along with navigating the challenges faced by OIDS when the agency was appointed to provide counsel to defendant Terry Nichols for his state trial relating to his role in the Murrah Building bombing. She also served nine years as a member and chair of the Oklahoma State Regents for Higher Education.

Rev. Dr. Lori Walke

The Rev. Dr. Lori Walke serves as the senior minister at Mayflower Congregational UCC Church in Oklahoma City. Blending her background as an attorney and minister, Dr. Walke is unabashedly enthusiastic about what a well-prepared argument and community can do to make life on Earth as it is in heaven. A recognized public speaker and author with a monthly column in *The Oklahoman* for the past four years, Dr. Walke gives a voice to those who often lack one.

Dr. Walke earned her B.S. in political science from OSU in 2005, where she was also a four-year scholarship student-athlete for Cowgirl basketball. She earned her M.S. in health care administration from OSU in 2006. She received her J.D. from the OCU School of Law in 2009 and passed the bar exam the same year. To further confuse people about what she wanted to be when she grew up, Dr. Walke then went on to earn her Master of Divinity from Phillips Theological Seminary and was ordained as a minister in the United Church of Christ in 2012. After serving as the associate minister of Mayflower Congregational UCC for eight years, she was called as senior minister in November 2020. She earned her Doctor of Ministry from Emory University in 2020. She and her husband, Collin, delight in their seven brilliant nieces and love to spoil Teddy, their ever-grinning pocket pit.

Monica Ybarra Weedn

Utilizing a unique blend of in-house counsel and private practice litigation experience, Monica Ybarra Weedn represents individual and business clients in her practice at Rosell & Love PLLC in Oklahoma City. Having previously served as corporate counsel and in-house director of legal affairs, Ms. Weedn appreciates the legal challenges and business concerns facing small and mid-sized companies, and she enjoys advising and problem-solving with business teams. Her first love was family law litigation, and she still represents clients in family law matters at both the trial and appellate levels.

After graduating from the OCU School of Law in 2014, she began her legal career as an associate at Phillips Murrah PC. She subsequently transitioned into in-house counsel work, where she discovered a new way to practice law as part of a business team. Now, back in private practice, she enjoys blending her experience to advocate for and advise her clients.

Her dedication to the legal profession has been recognized by *The Journal Record* (Leadership in Law Award), the Oklahoma County Bar Association (Community Service Award) and the OCU School of Law (Outstanding Young Alumnus), among others. She is the incoming vice president of the Oklahoma County Bar Association, one of the largest and most active voluntary bar associations in the country, and the incoming chair for OKConnect.

A passionate advocate for mentorship, Ms. Weedn mentors law students through the OCU Law Mentorship Program and other young professionals through the OKC Latino Young Professionals (OKCLYP) Association Mentorship Program. Additionally, she has mentored several high school and college students, helping them to grow and consider their full potential.

She dedicates time to numerous professional, community and nonprofit organizations, including the Oklahoma Board of Bar Examiners, the Oklahoma County Bar Association, the OBA Women in Law Section, OKCYLP, the Downtown Exchange Club of Oklahoma City, OKConnect and StitchCrew Inc. In her free time, she enjoys traveling, reading, hiking and attending local arts and sporting events.

Lead and Serve Your Bar Association in 2026

AS WE LOOK AHEAD TO 2026, the Oklahoma Bar Association invites you to make a meaningful impact by joining one of our many volunteer committees. There's no better time than the present to connect, contribute and grow. Join your fellow lawyers in serving on an OBA committee to help shape the future of the legal profession.

With more than 20 active committees to choose from, different opportunities and connections are waiting for you. Whatever your passion, there's a committee that needs your voice and perspective. This is your chance to get involved with the OBA, meet new lawyers and make a difference in your community.

From promoting access to justice and legal education to supporting lawyers facing personal challenges, OBA committees are making a difference. You'll also build your professional network and work on meaningful projects that align with your values.

Ready to get involved? Look at the committee list and fill out the form at https://bit.ly/3SjMzcE. Appointments for 2026 will be made soon, so don't wait!

Amber Peckio
President-Elect

To sign up or for more information, visit www.okbar.org/committees/committee-sign-up.

Access to Justice
Works to increase public access to legal resources

Awards
Solicits nominations for and identifies selection of OBA Awards recipients

Bar Association Technology
Monitors bar center technology to ensure it meets each department's needs

Bar Center Facilities
Provides direction to the executive director regarding the bar center, grounds and facilities

Bench and Bar
Among other objectives, aims to foster good relations between the judiciary and all bar members

Cannabis Law
Works to increase bar members' legal knowledge about cannabis and hemp laws

Civil Procedure and Evidence Code
Studies and makes recommendations on matters relating to civil procedure or the law of evidence

Disaster Response and Relief
Responds to and prepares bar members to assist with disaster victims' legal needs

Diversity
Identifies and fosters advances in diversity in the practice of law

Group Insurance
Reviews group and other insurance proposals for sponsorship

Law Day
Plans and coordinates all aspects of Oklahoma's Law Day celebration

Law Schools
Acts as liaison among law schools and the Supreme Court

Lawyers Helping Lawyers Assistance Program
Facilitates programs to assist lawyers in need of mental health services

Legal Internship
Liaisons with law schools and monitors and evaluates the legal internship program

Legislative Monitoring
Monitors legislative actions and reports on bills of interest to bar members

Membership Engagement
Facilitates communication and engagement initiatives to serve bar members

Military Assistance
Facilitates programs to assist service members with legal needs

Professionalism
Among other objectives, promotes and fosters professionalism and civility of lawyers

Rules of Professional Conduct
Proposes amendments to the ORPC

Solo and Small Firm Conference Planning
Plans and coordinates all aspects of the annual conference

Strategic Planning
Develops, revises, refines and updates the OBA's Long Range Plan and related studies

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2025 OKLAHOMA ACCESS TO JUSTICE SUMMIT

MEETING THE MOMENT

Program

Opening Plenary

Featuring Guest Speaker Anna Carpenter,
Dean of the University of Oklahoma College of Law

AI + Access to Justice

Rethinking Rural Legal Access

Immigration Issues Beyond the Border

Federal Support for Legal Services: A Shifting Landscape

Harnessing Generational Intelligence: Mentoring and Support in Today's Workplace

Dive Into ATJ Tech Tools

The Power of Pro Bono: Participation, Coordination, and Results

Law, Professionalism, and Practice in Oklahoma Indian Country

Know Your Rights: Attorney Edition

Closing Plenary Panel: Allyship in Action

Free Virtual Event – 10 hrs of CLE

October 24, 2025

For more information and to register, please visit **www.okaccesstojustice.org/summit**

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

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Confidential assistance with ethical questions and inquiries

$250/HR

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Business and management help through organization and operation assistance

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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**

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.

Strictly Business: Why We're Streamlining the 2025 OBA Annual Meeting

By Janet Johnson

OUR ANNUAL MEETING has always been one of my favorite traditions – a time to see familiar faces, meet new ones, and feel the shared pride of belonging to this profession. Over the years, it's been part conference, part reunion, and part celebration.

But just like the practice of law, our traditions sometimes need to adapt to meet the realities of our members' lives today. That's why, after a lot of thought and listening to your feedback, we've decided to make a change: *This year, our Annual Meeting will focus solely on official bar business.* I want to share why this change makes sense and why I think it will serve all of us well.

Bar business underway at the 2024 Annual Meeting. The 2025 OBA Annual Meeting will take place Nov. 6-7 at the Sheraton Oklahoma City Downtown Hotel. More information is on page 61 of this issue and online at www.okbar.org/annualmeeting.

GETTING BACK TO THE CORE PURPOSE

At its heart, the Annual Meeting exists for one reason: to take care of the OBA's official business. This is the moment when we elect leaders, vote on bylaw changes, hear reports, and make decisions that shape the way we serve members and the public. These aren't box-checking exercises; they're the very foundation of our association.

By dedicating the Annual Meeting exclusively to these responsibilities, we can focus on more offerings for continuing legal education and other events throughout the year.

YOU SPOKE, WE LISTENED

Over the past few years, we've heard from many of you that while you value the Annual Meeting, the reality is that busy calendars and long travel days make it hard to attend. Many members prefer to complete CLE on their own schedules or at different times of the year. Others have said they'd like to separate the business of the association from the educational and social parts of our community.

By streamlining the Annual Meeting, we are making it easier for more members to participate in the governance process without committing to a multi-day conference. You can attend for this core purpose – the decision-making – and fit it more easily into your schedule.

PUTTING RESOURCES WHERE THEY MATTER MOST

Hosting a large, multi-track event takes significant time, money, and staffing. By narrowing the scope, we can still meet our governance obligations while freeing up resources to invest in things you've told us matter:

- More CLE options throughout the year
- Technology upgrades that make participation easier
- Programs and services that directly support our members' professional needs

This isn't about doing less – it's about focusing our time and resources where they'll have the most impact.

STRENGTHENING THE CONNECTION

CLEs, section meetings, and networking events aren't going away. In fact, by separating them from the Annual Meeting, we can host more of them, in more locations, and in formats that work better for different kinds of schedules. We'll have more flexibility to offer programs when they're most relevant – whether it's a brand-new piece of legislation, an emerging area of law, or an issue members want to dive into right now.

LOOKING FORWARD TOGETHER

I know changing a long-standing tradition can feel different, but it's also a sign of a healthy, adaptable organization. This new approach will help us govern more effectively, engage more members, and make smarter use of our shared resources.

I look forward to seeing you at this year's Annual Meeting – ready to focus on the important work of shaping our bar association's future. And I look forward to seeing you at CLEs, section events, and other gatherings all year long.

After all, the Annual Meeting may be just two days, but our connections as colleagues last all year.

Janet

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

FREE CONFIDENTIAL ASSISTANCE

If you are struggling, there are people and programs almost instantly available that will help you get past the worst of moments and getting past that moment often makes all the difference. We must always remember that behind every lawyer is simply a person.

– Travis Pickens, 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.

WWW.OKBAR.ORG/LHL

Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

From the President

(continued from page 4)

Working Group Project. The project was intended to address the need for all OBA members to have a transition plan in place to protect their clients in the event of incapacity, death or disappearance.[1] However, there is no similar project to address the need for replacing our aging member population.

As Executive Director Janet Johnson mentioned in "My Midyear Reflection," her message in the August 2025 issue of the bar journal, one of my primary concerns this year has been access to justice. If you have not done so, please review "Bridging the Justice Gap" by Oklahoma Bar Foundation Executive Director Renee DeMoss, also in the August 2025 issue. The shrinking number of members can only exacerbate the current "justice gap." I have focused particularly on the "legal deserts" that exist in many of Oklahoma's lower-population counties. Fourteen of Oklahoma's counties have six or fewer attorneys. My initial efforts have been to reach out to local leaders in those 14 county seats to open discussions about how we can encourage new attorneys to consider locating their practices in these more rural areas. I sincerely solicit your suggestions regarding solutions for Oklahoma's legal deserts.

Please spread the word that these discussions are in no way intended to attack or disparage older lawyers. To the contrary, but for the continuing practice of our older members, Oklahoma would already be experiencing an even greater deficiency in access to justice. You may, confidentially if you so desire, provide any comments or thoughts you may have on these topics to me, Vice President Richard White, Executive Director Johnson or any of the members of the Board of Governors. These discussions are more necessary than at any time in our history and seek only the best for all concerned.

As always, thank you for your service to the public and our honorable profession!

ENDNOTE

1. The project's resulting work, *Planning Ahead Guide: Attorney Transition Planning in the Event of Death or Incapacity*, is available for download on the OBA website at https://bit.ly/4oOk3kO.

Answering the Call: Why Responsiveness Is Critical for Law Firm Success

By Julie Bays

HOW MANY POTENTIAL clients is your firm losing simply because no one answered the phone? Throughout the legal industry, law firms are losing a notable proportion of client inquiries, leading to revenue loss. This challenge extends from solo practitioners to mid-sized firms, where the inability to respond to or return calls promptly represents more than a customer service issue. It constitutes a systemic intake concern with tangible financial and ethical implications. As competition intensifies and clients increasingly demand prompt communication, firms that do not address these shortcomings risk falling behind.

THE PROBLEM

According to Clio's 2024 Legal Trends Report, the number of law firms answering an incoming call from a prospective client has dropped sharply from 56% in 2019 to just 40% in 2024. Even more concerning, of the firms that missed a call, only 20% returned it. This communication breakdown is so severe that nearly half of all firms (48%) were unreachable by phone, meaning they neither answered calls nor returned messages.[1]

The problem isn't limited to phone calls. Clio's research shows that a staggering 64% of prospective clients received no follow-up at all, whether by phone or email.[2] This means nearly two-thirds of legal inquiries go unanswered, a significantly missed opportunity.

This lack of responsiveness has a direct effect on business. In the same study, 73% of secret shopper clients said they would not recommend the firms they contacted. In stark contrast, those who reached a real person on the phone were significantly more likely to endorse the firm, with a 39% recommendation rate versus much lower rates for email or voicemail-only interactions.[3]

THE FINANCIAL IMPACT

This widespread communication breakdown can have effects that extend beyond immediate inconvenience, potentially impacting a law firm's financial stability. A study by Law Leaders estimates that U.S. law firms collectively let approximately 195 million incoming calls slip through the cracks each year. To put this in perspective, each missed call isn't merely a lost voice on the line – it represents a prospective client seeking help, sometimes urgently. With an average conversion rate of 7% and a typical client value of $8,000, the math is striking. This oversight translates to nearly 13.6 million lost clients and an astounding $109 billion in potential revenue vaporized annually.[4]

For solo practitioners and small firms, the effects are more pronounced. Unlike larger firms with resources for dedicated staff or comprehensive automated systems, solo attorneys typically manage all aspects of their practice. LexHelper's recent analysis indicates that solo attorneys miss over 35% of incoming calls during business hours, and this figure increases to 90% after hours when clients may require assistance. Voicemails are not always effective as a backup. More than half remain unanswered for 72 hours or longer, which may result in prospective clients not receiving timely responses.[5]

When a prospective client's call goes unanswered, it often triggers a chain reaction: The client moves down their list, quickly dialing another attorney until they reach someone who can assist them in real time. In the current legal market where clients can easily find multiple alternatives online, this may result in losing not only

a particular case but also a long-term client and their referrals.

Beyond direct financial impact, the cumulative effect of missed communication undermines a firm's reputation. Reviews and word-of-mouth increasingly highlight not only legal expertise but also accessibility and care. Law firms seen as unresponsive risk damaging their standing within the community and online, potentially deterring future inquiries before they even occur.

WASTED MARKETING

The financial hit does not end with missed clients; it is compounded by wasted marketing dollars. Law firms invest heavily to attract potential clients, but much of that expenditure goes down the drain when leads are ignored. According to CallRail, the average law firm spends $649 to generate a single lead.[6] Yet many of those leads never receive a reply, let alone convert into paying clients.

This disconnect between marketing investment and client intake is not just inefficient, but also costly. The legal industry ranks among the worst sectors for answering phone calls, despite pouring substantial resources into advertising and online visibility. Firms are paying premium prices to be found, only to let those hard-earned opportunities slip away the moment the phone rings.

SOLUTIONS: FROM INTAKE SYSTEMS TO AUTOMATION

The good news? Solving these communication breakdowns does not require a major overhaul. Today's technology offers accessible, affordable tools that can dramatically improve client intake and responsiveness, even for solo and small firm practices. Forward-thinking firms are already seeing the benefits of several tools.

Virtual Receptionists and Live Answering Services

Engaging a virtual receptionist or subscribing to a live answering service can be a game changer for law firms of any size, particularly solo practitioners and small practices. These services ensure that incoming calls are always answered by a trained professional, creating a welcoming and reliable first point of contact for prospective and current clients. Unlike generic call centers, many legal-focused virtual receptionist services are familiar with industry terminology and can handle sensitive client matters with the

discretion and professionalism the legal field demands.

Virtual receptionists can perform a range of functions beyond simply answering the phone. They can screen and prioritize calls, take detailed messages, schedule appointments directly into a firm's calendar and even answer basic client questions based on customized scripts.

For growing law firms, investing in a virtual receptionist service is often more cost-effective than hiring additional full-time staff, yet it provides a level of client care and responsiveness that helps set a firm apart in a crowded, competitive market. Ultimately, by capturing every opportunity and making every caller feel valued, virtual receptionists and live answering services become a vital link in converting inquiries into loyal, long-term clients.

Online Scheduling Tools

Allowing clients to book consultations through a website eliminates the frustrating cycle of phone tag and dramatically increases the likelihood that a prospect will become a paying client. Among the many options available, Microsoft Bookings stands out for its simplicity and seamless integration with tools many law firms already use.

Microsoft Bookings offers an intuitive interface that requires minimal technical expertise, making it easy for law firms to set up appointment types, customize availability and automate confirmation emails. Clients can view real-time openings, select their preferred time slot and receive instant confirmation, reducing the back-and-forth that often results in lost leads. For firms already using Microsoft Outlook or Teams, Bookings syncs directly with existing calendars, preventing double-booking and helping staff manage their schedules effortlessly.

AI-Powered Intake Tools

While chatbots and automated web forms are common across many industries, attorneys are right to question their maturity and suitability in the legal field, where confidentiality, accuracy and case nuance are paramount. That said, several tools built specifically for law firms are making strong progress in meeting these demands.

A notable example is LawDroid. Built from the ground up for legal professionals, LawDroid Builder supports intake automation with customizable, secure chatbots, captures lead data and integrates with popular case management systems without requiring coding skills.[7]

Other legal-specific solutions, such as Smith.ai, offer AI chat and virtual receptionist features developed with the legal industry in mind. These platforms allow firms to automate the intake process, screen clients for conflicts and schedule consultations directly.

Client Relationship Management Systems

Client relationship management (CRM) systems help track each lead's progress through the intake process from initial contact to the consultation. This ensures that every prospect is managed properly, and follow-up is consistent and effective.

Best of all, many popular legal practice management platforms already include intake and CRM tools, sometimes at no extra cost. MyCase and Smokeball, for example, offer built-in intake forms and basic lead tracking as part of their standard plans. Clio offers these features through Clio Grow, a separate but tightly integrated product. For many firms, using the tools they already have is the easiest first step toward improving client responsiveness and maximizing their marketing investments.

CONCLUSION

To better serve clients and protect your bottom line, start by taking a few simple but impactful steps. Begin with an honest audit of your call data: Are calls being answered promptly? Are voicemails returned? Then track your intake outcomes to see how many inquiries convert to actual clients. Consider whether your current systems are scaled appropriately for your firm's size and workflow. Finally, evaluate how your intake process aligns with your broader marketing strategy. Generating leads is only valuable if you can respond to them effectively. Improving intake isn't just about adopting new technology. It is about showing responsiveness, availability and professionalism.

Ms. Bays is the OBA Management Assistance Program director. Need a quick answer to a tech problem or help solving a management dilemma? Contact her at 405-416-7031, 800-522-8060 or julieb@okbar.org. It's a free member benefit.

ENDNOTES

1. "Highlights from the Legal Trends Report: the Legal Industry in 2024," Clio website. http://bit.ly/3UMJpSl.
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From Courtroom Tech to Case Outcomes: Improving Justice Infrastructure Across Oklahoma

By Renee DeMoss

COURTROOM TECHNOLOGY is one of the many ways the Oklahoma Bar Foundation is dedicated to bringing justice home. Court grants modernize proceedings, reduce case delays and expand access to justice for vulnerable populations.

This year, the OBF awarded five targeted technology grants to Garvin County, Jackson County, Oklahoma County, Pontotoc County and Tulsa County courts in the total amount of $172,360. These equipment upgrades are the infrastructure investments that enable courts to function more efficiently, fairly and equitably in the face of modern challenges.

For example, Pontotoc County received $50,000 in funds to renovate sound systems in all three of its courtrooms, which suffer from poor acoustics that hinder every hearing. With outdated and failing equipment, jurors, attorneys and spectators struggle to hear witness testimony, which impacts fairness and courtroom efficiency. The upgrade will ensure that legal proceedings, including the many jury trials and numerous daily hearings held each year, are conducted with clarity and accessibility for all participants.

In the Garvin County Courthouse, the OBF is helping with the $15,176 needed to replace a 20-year-old malfunctioning sound system in the associate district judge's courtroom and update aging digital recording equipment in both primary courtrooms. The current system frequently emits loud popping sounds during testimony, disrupting proceedings and forcing the judge to turn it off altogether. New digital recorders that use SD cards rather than CDs will ensure compatibility across all courtrooms, streamline record-keeping and assist court reporters with their transcription work.

The Jackson County Courthouse will modernize the audio and video systems in its three courtrooms, two of which rely on outdated systems installed in 2007. The $69,302 technology upgrades will allow the systems to be operated from an iPad and will improve courtroom communications by integrating microphones and speakers. This will ensure that jurors and witnesses can clearly hear testimony, and court

THE STRATEGIC CONNECTION

Findings from the 2024 Legal Needs Survey reinforce the urgency of courtroom technology upgrades:

- 43% of legal professionals cited "inadequate courtroom technology" as a barrier to effective client representation.
- Respondents across rural counties reported frequent hearing delays due to faulty audio systems.
- Technology limitations were linked to longer case timelines and reduced access for clients with disabilities or transportation barriers.

"When audio and video equipment fails, justice is delayed – and sometimes denied."

– 2024 Legal Needs Survey Respondent

New technology purchased through the OBF grants is installed in a Pittsburg County courtroom. Previously, the sound system interfered with proceedings, causing witnesses and counsel to turn off the microphones and yell to be heard. Now, this issue has been resolved to better their community.

Inset: *Pittsburg County received two OBF grants in 2024 to improve courtroom communications.*

reporters can accurately transcribe the proceedings.

The judges' conference room in the Oklahoma County Courthouse lacks the technology to conduct meetings online. Their new system, which will cost $15,000, will allow judges to remotely conduct and attend meetings and other court-related functions as well as participate in continuing education and other sessions. This will allow judges to be adequately involved and will take less time away from their dockets, contributing to the efficiency of the judicial system.

Finally, Tulsa County received $22,882 in funding to install an intercom system with door releases, enhancing both accessibility and security. Recent courthouse security upgrades restricted physical access to court personnel and judges, frustrating attorneys and members of the public who need information. By installing a video intercom system that allows staff to see who is requesting entry and grant access remotely, the court will streamline interactions and reduce delays in communications.

The 2024 Promoting Access to Justice Survey conducted by the OBF confirms what many attorneys and judges already know: Infrastructure gaps are barriers to accessing legal services. Lawyers surveyed across all 77 counties cited delays and limited courtroom technology as key obstacles preventing clients, particularly those in rural areas, from receiving timely legal relief.

The OBF, along with your support, is honored to fund these critical court grants because justice is better served when every voice in a courtroom is heard. Cases can move forward without unnecessary continuances, remote witnesses can participate, and vulnerable populations, such as those with disabilities or language barriers, can engage in the legal process more fully when the tools to support them are available and functioning properly. For more information on how you can help, please visit www.okbarfoundation.org.

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

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Tuesday, Sept. 9 • 1 - 2 p.m.

Maximize your OBA member benefits with this comprehensive introduction to vLex Fastcase's advanced legal research and workflow platform. During this session, you'll explore powerful search capabilities, learn to leverage AI-enhanced features like case analysis with headnotes and discover personalization options that streamline your research workflows.

This webinar will guide you through practical strategies to enhance your research efficiency and demonstrate how to make the most of your free access to the vLex Fastcase platform.

Scan the QR code or visit http://bit.ly/47y1UkO to register.

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Wednesday, Sept. 24 • 2 - 2:30 p.m.

Unlock the full potential of vLex Fastcase in this dynamic webinar. Learn how to refine your legal research with cutting-edge search techniques, advanced filtering and smart strategies designed to boost efficiency and precision. Whether you're just getting started or looking to sharpen your skills, this session will equip you with practical insights to streamline your workflows, uncover critical information faster, make confident, data-driven decisions and better serve your clients.

Don't miss this opportunity to take your legal research to the next level!

Scan the QR code or visit http://bit.ly/41aWyYV to register.

2026 YLD Leadership Candidates

By Taylor C. Venus

IT'S ALREADY TIME TO announce our slate of candidates for the 2026 YLD Board of Directors. We are back to our regularly scheduled ~~programming~~ elections with the return of the OBA Annual Meeting to November! I can't believe the year has gone by so quickly, and we are already looking forward to next year. I have truly enjoyed serving as your YLD chair this year and am excited to see what the last few months and next year bring. I want to take a moment to remind you that any OBA member who has been practicing for 10 years or fewer is automatically part of the OBA Young Lawyers Division.

The YLD has a Board of Directors who, after qualifying with nominating petitions, run for each district and/or at-large seat. Each lawyer is a volunteer who wants to work to serve other YLD members. The YLD is an important division of the state bar that gives new lawyers an avenue to gain leadership experience, network with more seasoned attorneys, get involved in service projects and so much more. The YLD board plays the important role of leading the division and deciding what events and service projects it will spearhead from year to year. Each officer serves a one-year term, and members of the Board of Directors serve two-year terms.

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

Volunteer lawyers from across the state gathered in August at the Donald W. Reynolds Library in Durant to help area veterans, first responders and emergency personnel with their wills and estate planning needs during a Wills for Heroes event coordinated by the Young Lawyers Division.

On the following pages, you will find the list of 2026 leadership candidates. Nominating petitions were accepted through Aug. 15. I love the desire to serve the YLD community with the contested election we get to experience this year! Per the YLD bylaws, "Those offices that are not contested will be deemed elected by acclamation." You can read more about the election process at www.okbar.org/yld.

In conjunction with this year's OBA Annual Meeting, the YLD Board of Directors will also host a meeting where your new YLD officers and directors will be announced. As a YLD member, you are invited and encouraged to attend. This is an excellent opportunity to greet your new YLD board, get to know your fellow YLD members and hear what goes on in the YLD board meetings if you are unfamiliar. Make plans now to attend the OBA Annual Meeting and the YLD board meeting this November at the Sheraton Oklahoma City Downtown Hotel. This will be a great chance to network with other attorneys from across the state and, of course, get more involved with your YLD!

Mr. Venus is a lawyer in Enid and serves as the YLD chairperson. He may be contacted at taylor@venuslawfirm.com.

2026 OBA YLD LEADERSHIP

2026 Chair

Alexandra J. "Allie" Gage

Alexandra J. "Allie" Gage is an estate planning attorney with Oath Law in Tulsa. She graduated from OSU in 2013 and spent several years serving communities abroad. In 2017, Ms. Gage returned to Tulsa to start her legal career by attending the TU College of Law, graduating in just 2 1/2 years with honors while also serving as president of the Board of Advocates, supervising editor for the *Tulsa Law Review* and chief justice of the Student Bar Association.

After law school, Ms. Gage began a career in civil litigation at a prestigious downtown Tulsa firm before transitioning to estate planning in 2025. Ms. Gage married her law school sweetheart in 2019, and they just welcomed a baby boy earlier this year. In her free time, Ms. Gage enjoys traveling, reading and spending time with her family.

Ms. Gage joined the YLD Board of Directors in 2021 in an effort to better connect with and serve her community after the COVID-19 pandemic left its mark on Oklahoma. As a member of the Board of Directors, and now as chair-elect, Ms. Gage has enjoyed serving her community and her fellow attorneys through the various opportunities afforded by the YLD over the past four years. She looks forward to leading the YLD throughout this next year and serving for many more years to come.

2026 Immediate Past Chair

Taylor C. Venus

Taylor C. Venus is a native of Ponca City who graduated from OSU with bachelor's degrees in economics and finance. While attending OSU, Mr. Venus had the honor of being Pistol Pete. Thereafter, he obtained his J.D. and MBA at OU. While in law school, he served as the articles editor for the *Oil and Gas, Natural Resources, and Energy Journal* and as an officer or representative in multiple student groups.

Mr. Venus has a passion for serving his local community and supporting other regional and statewide organizations. In Enid, Mr. Venus' greatest passion is serving on the Enid Public School Foundation, while actively serving or volunteering in many other community activities. Outside his local community, he is the current chair of the OBA YLD, a member of the OBA Board of Governors and the longest tenured member of his fraternity alumni board. Outside the office, Mr. Venus enjoys spending time with his friends and family, golfing, hunting and being an armchair expert on his favorite sports teams and political views.

UNCONTESTED ELECTIONS

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

Chair-Elect

Randy G. Gordon

Randy G. Gordon joined the Shawnee law firm of Stuart & Clover PLLC in 2021 as a partner, bringing his wealth of litigation and creditors' rights knowledge from his previous employment. He primarily practices in the areas of civil and commercial litigation and creditors' rights. A favorite quote is, "I love the challenge and hustle that my work requires." He remains a dedicated OSU fan, despite receiving his J.D. from his dreaded rival, OU.

Mr. Gordon has served on the Oklahoma County Bar Association Young Lawyers Division board, which has been personally and

professionally enriching. He enjoys being a member of a board that serves not only the legal community but also the Oklahoma City community at large through philanthropic efforts. He also serves as the head of the community outreach committee of Emmanuel Episcopal Church in Shawnee.

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

Treasurer; District 7; At-Large Rural; At-Large

Clayton M. Baker

Clayton M. Baker is a partner at Davis & Thompson PLLC in Jay. Mr. Baker graduated from Midwestern State University in 2011 with a bachelor's degree in criminal justice and political science. He received his J.D. from the TU College of Law in 2015 with honors.

Mr. Baker and his wife, Joanna, moved to Grove in 2015 and have enjoyed raising their family on Grand Lake since. They have two beautiful daughters, Gentry and Everly. Most of their free time is spent chasing the girls or at cheer practice and football games.

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

District 1; At-Large; At-Large Rural
Shelby Hembree

See candidate information under "Contested Election" below.

District 1; At-Large; At-Large Rural

Morgan Maxey

Morgan Maxey is an attorney with the multi-generational Maxey Law LLC in northeast Oklahoma. His practice focuses primarily on criminal defense and the emerging field of animal law. Mr. Maxey is a board member of the OBA Animal Law Section and the OBA Young Lawyers Division. As part of YLD, Mr. Maxey has coordinated and conducted multiple CLEs, including the upcoming CLE "Been There, Filed That," which is specifically geared toward the young attorney practice in Oklahoma. Mr. Maxey is a graduate of the TU College of Law.

After receiving his J.D., he worked as the northwest director of early settlement mediation for the Oklahoma Administrative Office of the Courts. He is certified by the AOC as a civil, family law and child permanency mediator. Mr. Maxey subsequently worked as defense counsel for the Oklahoma Indigent Defense System (OIDS). He is a member of the Craig County and Rogers County bar associations, the Oklahoma Criminal Defense Lawyers Association, the National Association of Criminal Defense Lawyers and the OBA Animal Law Section. In his free time, he enjoys hiking, water sports, OSU athletics and attending concerts of all genres.

District 2; At-Large; At-Large Rural

Chloe M. Moyer

Chloe M. Moyer is a native of Idabel and a proud citizen of the Choctaw Nation of Oklahoma. Ms. Moyer received her BBA in accounting from Northeastern State University in 2018 and her J.D. from the OCU School of Law in 2021. During her time at OCU, she participated in the American Indian Wills Clinic and was a member of multiple organizations and groups, including the *Oklahoma City University Law Review*, the William J. Holloway Jr. American Inn of Court and the International Legal Honor Society of Phi Delta Phi. She focused her studies on Indian law and estate planning. Her note, "An Oklahoma Tribal Employer's Guide to Conducting Business in the Tenth Circuit," was published in the *Oklahoma City University Law Review*. Upon graduation, she received a certificate in estate planning. Ms. Moyer has a general practice located in Durant, while also providing counsel to several tribal nations. She is a proud board member of the Chahta Foundation and enjoys serving her Native community.

District 3; At-Large

Chelsi Chaffin Bonano

Chelsi Chaffin Bonano earned her J.D. from the OCU School of Law in May 2021.

Ms. Bonano has experience in medical liability and health care law and spent the first three years of her career defending medical professionals, hospitals, doctors, nursing homes, retirement communities and surgery centers in medical negligence litigation. Her practice now includes representing individuals and companies in the areas of general civil litigation, including auto negligence, premises liability, contracts and bad faith.

Ms. Bonano is an active member of the Oklahoma County Bar Association, serving as vice chair on the Young Lawyers Division Board of Directors.

District 3; At-Large

Thomas Grossnicklaus

Thomas Grossnicklaus was born in Oklahoma City and enlisted in the U.S. Marine Corps after graduating from Piedmont High School. He was assigned to the Fleet Anti-Terrorism Security Team, which was created under President Reagan after the Iranian hostage crisis. Mr. Grossnicklaus deployed with his unit to Guantanamo Bay, Cuba, and then to Bahrain, where they served as a quick response force to the Middle East region and as a protection crew (Raven Crew) to C-130 airplanes and highly important cargo and individuals around the region. During this deployment, he was the section leader for the Designated Marksman Unit. After the Middle East erupted following the killing of Christopher Stevens in Benghazi, Libya, his unit was activated and sent on an eight-month mission. The bulk of that time was spent recapturing and securing the American Embassy in Yemen. After this long and difficult deployment, he returned to Oklahoma and dedicated himself to serving his home state and community.

He received his bachelor's degree in political science from OCU and worked for Congressman Steve Russell in his district office and on a successful reelection campaign. While earning his J.D. from the OCU School of Law, Mr. Grossnicklaus worked in Gov. Mary Fallin's office as an aide and liaison to general counsel. He then served as a clerk for Oklahoma Supreme Court Justice James Winchester.

Currently, Mr. Grossnicklaus serves as an assistant attorney general in the Legal Counsel Unit. He prosecutes for the Oklahoma Funeral Board and the Workers' Compensation Commission Compliance Department. He is also general counsel for the secretary of state, the Oklahoma Historical Society, the Oklahoma State Fire Marshal and the Oklahoma State Board of Examiners for Long Term Care Administrators. He is in the Leadership Certificate Program at the Harvard Kennedy School and plans on using these hours toward receiving a master's degree in public administration. He is a graduate of the Leadership Oklahoma City LOYAL program, a NextGen Under 30 recipient and a member of the Oklahoma City Downtown Rotary. He also sits on multiple boards or advisory boards and is always looking to serve on other nonprofit boards.

District 3; At-Large

Bryan Goodpasture

Bryan Goodpasture graduated from OSU in 2015 and the OU College of Law in 2019 (Go Pokes). He is currently an associate attorney at Durbin Larimore Bialick, representing clients in a wide variety of civil litigation matters. Mr. Goodpasture has the good fortune to be practicing at the firm that made him realize his interest in the legal profession through an internship during his first year of undergraduate studies. He is now looking for opportunities to get more involved with and give back to the legal community. Outside of work, you will find him golfing, watching any and all OSU sports or just hanging out with his soon-to-be wife, family or friends. You will also be sure to find him at the local piano bar, no matter what city he may be in (although none have topped Shady Keys in Tulsa).

District 5; At-Large; At-Large Rural

Liz Stevens

Liz Stevens was born and raised in Norman. She received a bachelor's degree in history from OU. Before attending law school, she spent several years teaching English as a second language in Russia and Rwanda.

Ms. Stevens graduated from the OU College of Law in 2019. In law school, she served as an editor for the *American Indian Law Review* and was the director of judge recruitment for the Board of Advocates. She received the Masterson Award for her work on the *American Indian Law Review*, as well as the Class of 2019 Pro Bono Award. She also received the Cindy Foley Award for her work with the OU Legal Clinic and was an Oklahoma Bar Foundation Fellow. While pursuing her J.D., she served as a judicial intern for

Justice Noma D. Gurich of the Oklahoma Supreme Court, as well as an intern for the Committee on the Elimination of Racial Discrimination at the United Nations.

She currently works at the Office of the Attorney General in the Legal Counsel Unit. In her spare time, she enjoys traveling to exotic places, reading historical fiction books and playing with her dog, Bear.

CONTESTED ELECTION

The following persons have been nominated and are running contested for the following position. Results will be announced at the YLD November meeting.

Secretary

Mary R. McCann

Mary R. McCann is a dedicated and accomplished attorney practicing in Yukon. She earned her bachelor's degree in journalism from OSU in 2018 and her J.D. from the OCU School of Law in 2021. She currently practices at Bedlam Law, where she focuses on probate and estate planning. She is passionate about helping individuals and families navigate complex legal matters with compassion and clarity.

Ms. McCann is actively involved in the OBA and serves as the District 9 representative for the YLD. She is also vice president of the Canadian County Bar Association and an executive member of the Robert J. Turner American Inn of Court. Her leadership and ongoing engagement in these professional organizations reflect her strong commitment to the legal community.

Outside of her legal work, she is an avid runner and an enthusiastic Oklahoma City Thunder fan, and she enjoys staying active in her community. Her dedication to her clients, along with her approachable nature, make her a respected member of the legal profession. She is excited to run for secretary and hopes to serve the YLD board in this capacity!

Shelby Hembree

Shelby Hembree is an attorney at Hembree & Hembree. Ms. Hembree focuses her practice exclusively on oil and gas title matters. She also volunteers her time at Wills for Heroes, an OBA YLD program designed to provide free estate planning for first responders and veterans.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of **Associate District Judge, Twentieth Judicial District, Murray County**. This vacancy is created by the resignation of the Honorable Mark Melton, effective September 30, 2025.

To be appointed to the above-referenced Office of Associate District Judge, one must be a registered voter of the Twentieth Judicial District at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of two years' experience in Oklahoma as a licensed practicing attorney, a judge of a court of record, or both.

Application forms may be obtained online at https://okjnc.com or by contacting Gina Antipov at (405) 556-9673. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, September 26, 2025. Applications may be mailed, hand delivered, or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before September 26, 2025, to be deemed timely. Applications should be mailed/delivered to:

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

ON THE MOVE

Scott Thompson has joined the Oklahoma Bankers Association as general counsel and senior vice president. He has nearly 30 years of legal and executive experience in banking, business law and governmental relations. Prior to joining the association, he served for nine years as general counsel for SpiritBank. Mr. Thompson's career also includes private practice representing businesses and regulated industries and working in governmental relations in Washington, D.C. He is also a member of the F&M Bank Board of Directors. He received his J.D. from the George Washington University Law School.

Hayley Sharp has joined Helton Law Firm in Tulsa as its inaugural director of client experience. In this position, she will transform the way clients interact with the firm. She has practiced in the areas of civil litigation, product liability, probate and estate planning, and she has most recently led customer experience strategy at a national online clothing retailer. Ms. Sharp received her J.D. *cum laude* from the University of California College of the Law, San Francisco. She is also licensed to practice in California.

Matthew Felty has joined the Oklahoma City law firm of Ryan Whaley as a director. He has complex litigation experience in state and federal courts nationwide, 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.

Heath W. Garwood has joined the Oklahoma City law firm of Ryan Whaley as an associate. He is a trial lawyer with a practice primarily focused on complex civil litigation. His litigation experience encompasses a variety of practice areas, specifically energy, construction, complex commercial disputes, real property disputes and catastrophic personal injury/wrongful death. In addition, 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. Mr. Garwood attended the OU College of Law.

Vanessa L. Lock has joined McAfee & Taft as of counsel in the Insurance Coverage and Extra-Contractual Litigation Practice Group. She is a research and writing lawyer whose state and federal civil litigation practice is focused on the representation of national insurance carriers in lawsuits alleging bad faith, breach of contract and breach of fiduciary duty, fraud, negligent underwriting and violations of consumer protection laws, as well as in coverage disputes arising under personal and commercial insurance policies. Additionally, she devotes a portion of her practice to reviewing and analyzing insurance policies, preparing coverage opinions and representing clients in complex business disputes. She previously worked as a litigation associate at several Tulsa-based firms, representing clients in matters involving insurance law and litigation, personal injury disputes, medical malpractice litigation and business and commercial disputes. Ms. Lock received her J.D. with highest honors from the TU College of Law in 2018.

Tyler E. Ames has rejoined McAfee & Taft as an associate after serving as a federal law clerk to Chief Judge Timothy D. DeGiusti of the U.S. District Court for the Western District of Oklahoma. His litigation practice includes first-party insurance disputes, complex business disputes, product liability defense, class actions, construction disputes, personal injury defense and professional negligence. He also devotes a significant portion of his practice to representing employers and management in disputes arising under Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Fair Labor Standards Act, National Labor Relations Act and other federal and state laws governing employers. He originally joined the law firm in 2021 after beginning his legal career as an

associate in the Houston office of the global law firm of Norton Rose Fulbright. Mr. Ames received his J.D. from the University of Texas at Austin School of Law in 2019.

Tara A. LaClair, **Jennifer N. Lamirand** and **Bruce W. Day** have joined the new Oklahoma City office of Bressler, Amery & Ross PC. Ms. LaClair is a principal and trial lawyer. She focuses on financial services and securities litigation, representing banks, brokerage firms, registered investment advisors, insurance companies, trust companies, securities agents and individuals in arbitration and court proceedings, regulatory actions and employment proceedings. She also handles complex and general litigation, representing insurance companies in bad faith litigation and claims litigation, as well as trust companies and fiduciaries. Ms. Lamirand is a principal and focuses her practice on litigation in the areas of tribal law, federal Indian law and gaming, securities, contracts and insurance defense. She has represented a range of clients, including tribal governments and officials, national and international financial institutions, insurance companies, local businesses and individuals in a diverse range of litigation. She is a citizen of the Citizen Potawatomi Nation and serves as an associate justice on the Citizen Potawatomi Nation Supreme Court. Mr. Day has a national practice in securities and health care litigation, as well as public policy matters. In his securities practice, he has represented some of the nation's largest securities firms, as well as regional and local firms, individual securities agents and investment advisors. He also represents health care professionals in Medicare billing and Medicare false claims matters. Mr. Day works closely with the firm's Labor & Employment Law and Energy & Natural Resources practice groups. He has represented clients in employment disputes and private and public offerings/financing of oil and gas ventures. As a result of his public policy and education reform efforts, he has represented charter schools and led other public education reform efforts.

Charlie Floyd has joined McAfee & Taft as of counsel in the Banking and Financial Institutions Practice Group. He has nearly 20 years of experience working in both private practice and private industry. His practice is focused on representing and providing strategic advice to banks, credit unions, mortgage companies and other financial institutions in a broad range of matters, including regulatory compliance, corporate governance and litigation. Mr. Floyd was previously chief counsel and corporate secretary for an Oklahoma bank operating a national mortgage lending business and as in-house counsel at JPMorgan Chase & Co. and Capital One. He began his legal career as a litigation associate in the Dallas offices of two global law firms. He received his J.D. from the University of Chicago Law School. He is admitted to practice in all state courts in Texas and is a member of the Southwest Association of Bank Counsel. He also serves on the OBA Investment Committee.

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:

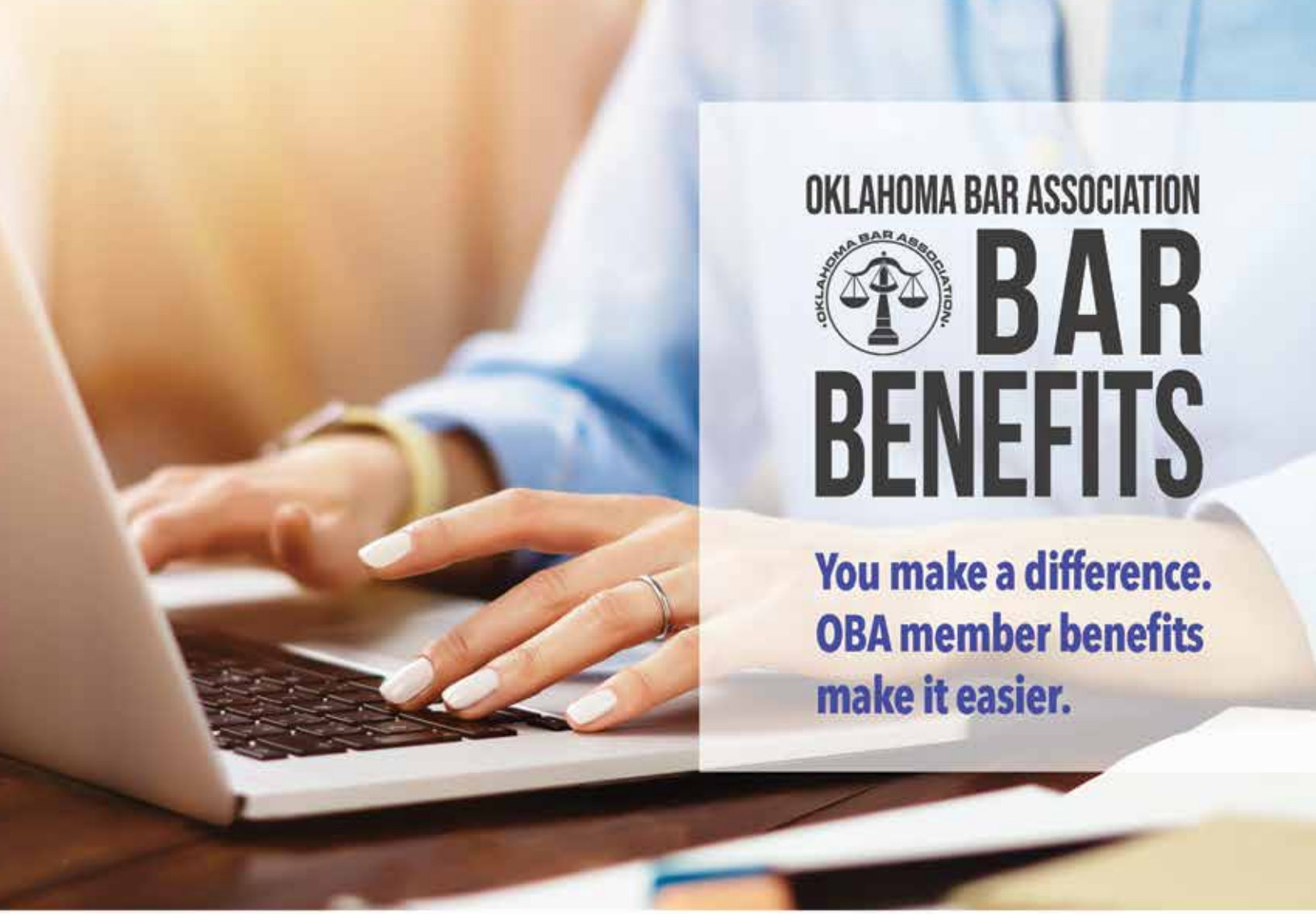
Hailey Boyd
Communications Dept.
Oklahoma Bar Association
405-416-7033
barbriefs@okbar.org

Articles for the November issue must be received by Oct. 1.

KUDOS

Jake Jones was recognized for his 24 years of service with the Oklahoma Indigent Defense System (OIDS), including the last 12 years as chairman. He was originally appointed to the OIDS Board of Directors in 2001 by Gov. Frank Keating and subsequently reappointed by Gov. Brad Henry, Gov. Mary Fallin and Gov. Kevin Stitt. Mr. Jones has been the longest-serving member since the agency's inception and has practiced law since 1982. He has also been active in the Oklahoma County Bar Association, was elected to the Judicial Nominating Commission in 1991 and currently serves as a mediator and arbitrator at Jake Jones Mediation.

Michael L. Carr was elected to the American Board of Trial Advocates at the organization's national board meeting in July in Banff, Canada. ABOTA is an invitation-only national association of experienced trial lawyers and judges whose members are dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. Mr. Carr has more than 25 years of experience litigating complex civil disputes. He is a 2006 graduate of the International Association of Defense Counsel Trial Academy at Stanford University and a member of the Tulsa County Bar Association, the Defense Research Institute and the Hudson-Hall-Wheaton American Inn of Court.



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In Memoriam

Duchess Bartmess of Oklahoma City died May 22. She was born Dec. 15, 1939, in Denver. She graduated from the University of Minnesota and worked at the Oklahoma County Court Clerk's Office before enrolling in law school night classes. Ms. Bartmess received her J.D. from the OCU School of Law in 1966. She went to work for Oklahoma Attorney General Larry Derryberry as an assistant attorney general for four years. While at the state Capitol, she was hired by the Oklahoma Legislature to serve as chief counsel. She wrote legislation and conducted law research. While there, she was appointed to a commission on uniform state laws. She was also appointed as general counsel for Gov. Keating and served until her retirement in 1998.

Jerry V. Beavin of Choctaw died July 31, 2024. He was born June 18, 1937. Mr. Beavin received his J.D. from the OCU School of Law.

Barbara Beames Billings of Woodward died Feb. 16, 2025. She was born Feb. 6, 1953. Ms. Billings received her J.D. from the OU College of Law in 1978.

Charles Ronald Britton of Tulsa died Nov. 13, 2024. He was born Nov. 22, 1939, in Tulsa. Mr. Britton received his J.D. from the University of Denver Sturm College of Law and practiced in Oklahoma City and Tulsa.

Deanna Burger of Norman died March 17. She was born Sept. 20, 1937. Ms. Burger received her J.D. from the OU College of Law in 1961.

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. Early in his legal career, he interned under former U.S. Sen. Don Nickles and was a graduate assistant at the TU College of Law. He served as a municipal judge for Pryor and Locust Grove and was a member of the First Free Will Baptist Church in Pryor and The Gideons International for the past 10 years.

Billy Stephen Edwards of Spring, Texas, died Sept. 19, 2024. He was born Aug. 30, 1938, in Neodesha, Kansas. He attended OSU and received his J.D. from the OU College of Law in 1965.

Sandra R. Fallin of Grafton, Wisconsin, died Jan. 2. She was born April 8, 1938, in Fond du Lac, Wisconsin. Ms. Fallin graduated from Rufus King High School in 1956. She received her J.D. from the TU College of Law in 1987 and spent the majority of her legal career as a social security and disability attorney. Ms. Fallin was a member of Cornerstone Church in Grafton.

John Mancil Fish Jr. of Bartlesville died Oct. 15, 2024. He was born March 13, 1937, in Tulsa. Mr. Fish attended Will Rogers High School in Tulsa, graduated from OU with a degree in mechanical engineering and received his J.D. from the OU College of Law in 1963. **He entered the ROTC program and served as an officer in the U.S. Army.** After being honorably discharged, Mr. Fish joined the law firm of Laney, Dougherty, Hessin & Fish in Oklahoma City. In 1977, he joined Phillips Petroleum Co. in Bartlesville, where he worked as a senior patent attorney until his retirement in 2003. He played in the Bartlesville Symphony Orchestra for 47 years.

Kent F. Frates of Oklahoma City died June 12. He was born Sept. 27, 1938, in Oklahoma City. He attended Casady School, graduated from Stanford University and received his J.D. from the University of Arizona James E. Rogers College of Law in 1964. Mr. Frates began practicing in Oklahoma City in the mid-1960s. **He served in the U.S. Air Force Reserve from 1960 to 1966.** In 1970, he was elected to the Oklahoma House of Representatives and served as the minority leader from 1976 to 1978. Mr. Frates was a practicing attorney for over five decades and wrote seven books and a feature film, all centered on Oklahoma.

Jack Yelton Goree of Prue died Feb. 5, 2024. He was born Feb. 13, 1939. Mr. Goree received his J.D. from the TU College of Law in 1969.

Malcolm Wardlaw Hall of Oklahoma City died March 13. He was born Jan. 13, 1940, in Paint Rock, Texas. He graduated from Texas A&M University in 1962. During college, he studied business and economics and served as president of his class and the student body during his senior year. **Mr. Hall served as an intelligence officer in the U.S. Army, dedicating seven years to military service.** He went on to earn his master's degree in economics from

the University of Kentucky and his J.D. from the OU College of Law in 1968. He was a member of the Presbyterian Church, serving as a Sunday school teacher, elder and deacon at Central Presbyterian Church before continuing in those roles at Westminster Presbyterian Church. He served on the Presbyterian Mo-Ranch Assembly Board of Trustees, as a trustee for the Synod of the Sun, a voting member of the Federated Church of Martha's Vineyard in Edgartown, Massachusetts, and on the board of the Texas Presbyterian Trust. In addition to his church leadership, Mr. Hall volunteered as a pro bono attorney for families seeking adoption.

Gordon S. Harman of Bixby died May 25, 2024. He was born May 14, 1937, in Abbs Valley, Virginia. **At 17 years old, Mr. Harman joined the U.S. Air Force, achieving the rank of chief master sergeant. He served for 24 years, including at several duty stations, and was awarded the Bronze Star Medal.** He continued his education while enlisted and graduated from Park College with a bachelor's degree in business administration and economics. Mr. Harman retired from the Air Force in 1978 and attended the TU College of Law. He worked as an attorney in Tulsa until his retirement in 2006.

Samuel I. Hellman of Water Mill, New York, died March 22, 2024. He was born March 28, 1940, in Chandler. He graduated from Washington and Lee University with a bachelor's degree in 1963 and received his J.D. from the OU College of Law in 1968. He began his legal career as an assistant attorney general in Oklahoma. Mr. Hellman practiced in public finance and became a managing partner at the New York City law firm of Wood, Dawson, Smith & Hellman before ultimately merging the firm with Hawkins, Delafield & Wood.

Russell Grant Horner Jr. of Oklahoma City died July 10, 2024. He was born Aug. 17, 1939, in Miami. Mr. Horner received his J.D. from the OU College of Law in 1963. He worked at Kerr-McGee Corp. for more than 30 years and served in many capacities, including executive vice president of Transworld Drilling Cos. Prior to his retirement, Mr. Horner held the positions of senior vice president, general counsel and corporate secretary.

Scott Patrick Kedy of Oklahoma City died July 1. He was born June 30, 1985, in Ada. He attended OCU and was an integral member of the varsity golf team from 2003 to 2007. He graduated with a bachelor's degree and an MBA. Mr. Kedy received his J.D. from the OCU School of Law in 2012.

Michael Elliott Krasnow of Bradenton, Florida, died Dec. 7, 2024. He was born June 26, 1939. **After graduating from high school, he enlisted in the U.S. Navy and served as a radioman.** Mr. Krasnow graduated from OU with a bachelor's degree in accounting. He received his J.D. from the OU College of Law in 1967 and practiced in Oklahoma City for nearly 50 years. Most recently, he conducted CLE programs at schools in Florida. He served in leadership roles at Emanuel Synagogue in Oklahoma City, including president, and Temple Beth Sholom in Sarasota, Florida.

Timothy Manuel Larason of Edmond died Nov. 22, 2024. He was born Nov. 28, 1939. He graduated from OU with a degree in accounting and from Northwestern University with a graduate business degree. He received his J.D. from the OCU School of Law in 1968. Mr. Larason practiced tax law and estate planning. He also mentored young lawyers, helped several charities set up endowment or educational funds and provided pro bono services to clients in need.

Frank Thompson Read of Woodbridge, Virginia, died April 7. He was born July 16, 1938, in Ogden, Utah. He graduated from Brigham Young University, where he was a member of the debate team that won two national championships. Mr. Read received his J.D. from the Duke University School of Law. He went on to teach and serve as the assistant dean at the law school. He also served as dean of the TU College of Law, the Indiana University Robert H. McKinney School of Law, the University of California College of the Law, San Francisco and the University of Florida Levin College of Law. His last full-time position was as president and dean of the South Texas College of Law Houston. Mr. Read collaborated on several books and served in leadership positions, including president of the Law School Admissions Council and a member of Atlanta's John Marshall Law School Board of Directors. He was also a member of The Church of Jesus Christ of Latter-day Saints.

Andrew J. Reinert of Ponca City died Jan. 15. He was born Feb. 11, 1938, in Enid. He graduated from Pioneer High School and from OSU with a bachelor's degree in chemistry. Following graduation, Mr. Reinert worked with Phillips Petroleum Co. in Bartlesville. He received his J.D. from the TU College of Law and began his legal career at Conoco, where he worked as a patent attorney. After three years, Mr. Reinert began working with City Services in Tulsa before returning to Conoco. He retired in 1993 and was a member of St. Mary's Catholic Church.

Patrick C. Ryan of Oklahoma City died May 3. He was born June 15, 1935, in Clinton and graduated from St. Gregory's High School in Shawnee. **Mr. Ryan served in the U.S. Army and was stationed in Washington, D.C.** He graduated from the University of Central Oklahoma in 1961 and attended night classes at law school while working at the Oklahoma Insurance Department. He received his J.D. from the OCU School of Law in 1968 and was named general counsel for the Insurance Department. Mr. Ryan was appointed director of the Oklahoma Securities Department and then later director of the Oklahoma Department of Consumer Affairs. In 1974, he was appointed to a judgeship with 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, Mr. Ryan also found time to teach workers' compensation law as an adjunct professor at the OCU School of Law. He received his OBA 50-year milestone anniversary pin in 2018. He left the bench in 1984 to form the law firm known as Boettcher & Ryan, which eventually expanded to Oklahoma City, Tulsa and Ponca City. He retired in 1998 but continued to serve as of counsel to the firm.

Paul Mack Shaver of Fort Smith, Arkansas, died Dec. 31, 2024. He was born Jan. 25, 1940, in Grand Coulee, Washington. He graduated from Fort Smith High School in 1958 and from Harvard University with a bachelor's degree in 1962. Mr. Shaver received his J.D. from the University of Arkansas School of Law in 1965 and was a member of the *Arkansas Law Review* from 1963 to 1965. He joined the law firm then known as Warner, Warner & Ragon in Fort Smith, Arkansas. He moved his law practice to Oklahoma City and practiced as an oil and gas attorney. Mr. Shaver received his Ph.D. in organizational management and mass communications from OU in 1991. He served as a professor of communications in Oklahoma, New Mexico and Indiana and as a delegate to the 1992 Democratic National Convention. He later returned to the oil and gas industry, founding the Sabine River Land Co. in Sugar Land, Texas. In 2004, Mr. Shaver moved back to Fort Smith, where he continued practicing oil and gas law until his retirement. He was a member of the Arkansas Bar Association and a certified professional landman.

M. C. Smothermon of Edmond died Aug. 22, 2024. She was born Jan. 18, 1940, in Garden City, Kansas. She graduated from high school in Denver and went to work at the United States Air Force Academy. Ms. Smothermon founded RAIN in 1992, an organization dedicated to providing support, advocacy and care to individuals living with HIV/AIDS. Her work in this area led to her being honored in the *Book of Lives & Legacies* in the National Women's Hall of Fame in 1995. Later that year, she became the oldest recipient of the Harry S. Truman Scholarship, which allowed her to intern at the White House and earn her undergraduate degree at the age of 56. Upon graduation, she attended the OCU School of Law, where she was selected as the Outstanding Woman Law Graduate for 2002. She devoted the bulk of her legal career to representing parents and children at the Oklahoma County Juvenile Bureau.

Janelle Hicks Steltzlen of Tulsa died Jan. 4. She was born Sept. 18, 1937, in Atlanta. She graduated with a bachelor's degree from OSU in 1958, a master's degree from Kansas State University in 1967 and a J.D. from the TU College of Law in 1981. Ms. Steltzlen was also a licensed real estate broker and had been admitted to practice law in several courts, including the U.S. Supreme Court. Before becoming a lawyer, she was a school food services director at Kansas State University and worked as a dietitian in the Turner Unified School District in Kansas. She began her career as a dietetic resident at OU, where she became a registered dietitian. She had a private practice in Tulsa from 1981 to 1997. In addition to her legal work, Ms. Steltzlen was a lecturer at the College of DuPage and Tulsa Community College and was an active reserve deputy for the Tulsa County Sheriff's Office. She served on various boards and committees, including the Tulsa Sister City San Luis Potosí, Mexico, and the Tulsa County Tax Oversight Committee. She was also involved with professional organizations, including the Academy of Nutrition and Dietetics.

Carol Sue Sullivan of Oklahoma City died Feb. 6. She was born Oct. 8, 1939. Ms. Sullivan received her J.D. from the OU College of Law in 1992.

David Swank of Stillwater died June 15. He was born Oct. 11, 1931. Mr. Swank graduated from OSU with a bachelor's degree in political science in 1953. He was a member of Phi Beta Kappa and was named the nation's outstanding ROTC graduate. **Mr. Swank served active duty as a ranger and lieutenant in the U.S. Army's 101st Airborne Division.** He received his J.D. from the OU College of Law in 1959 and joined his father and brothers in practice at the law firm of Swank & Swank in Stillwater. **He continued to serve as a major in the U.S. Army Special Forces (Green Berets) for the next 10 years.** In 1962, Mr. Swank was elected to serve as the Payne County district attorney but soon accepted an offer to teach at the OU College of Law. He served as a law professor for 55 years, including over seven years as dean of the law school. He served for nearly 20 years as OU's faculty representative to the former Big 8 Conference and the NCAA, seven years as vice president of the NCAA and nine years on the Committee on Infractions, acting as chair for his final seven years. He served as faculty advisor to OU law students in many successful regional and national moot court competitions and founded the Cleveland County Legal Aid office, serving as its director for four years. Mr. Swank also served as OU's interim president from 1988 to 1989.

Elizabeth S. Wilson of Edmond died July 11. She was born June 18, 1961, in Lexington, Kentucky. She graduated from Casady School and earned her bachelor's degree from Trinity University. Ms. Wilson received her J.D. from the OCU School of Law in 1986 and spent 34 years working with Oklahoma Human Services in Child Support Services. She started as a state attorney and managing attorney in field offices, handling litigation and managing three local offices. She then joined the state office as deputy director, giving legal guidance to staff, writing and implementing laws and policy, overseeing field offices and working on statewide projects and professional development. She presented many attorney and staff trainings locally and at national conferences. Ms. Wilson found her passion as a volunteer advocate and local political organizer with Edmond Democratic Women. She served as the recruit, support and election chair and campaign liaison to several candidates; the recording secretary; and the 2023-2024 president. She also mentored others to advocate for legislation, register voters, do precinct work and support candidates.

Frank Burleigh Wolfe III of Tulsa died Oct. 21, 2024. He was born Feb. 23, 1939, in Michigan. He attended Cascia Hall Preparatory School, Central High School and Washington and Lee University in Lexington, Virginia. **Mr. Wolfe joined ROTC and the U.S. Army, where he earned the rank of captain before retiring.** He co-owned and operated a construction company with his father before deciding to attend the TU College of Law, where he received his J.D. He practiced law for multiple years before co-founding Nichols & Wolfe Law Firm, which eventually merged with Hall Estill in 2006. Mr. Wolfe primarily practiced in the area of labor law.

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david@youngbloodatoka.com

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Contact: Send replies to Box NC, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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To receive full consideration, resumes should be submitted via email by September 30, 2025, to cindy.pearson@okstate.edu.

For accommodation requests and assistance visit the OSU System Campus Human Resources Contacts. The OSU System includes campuses located in Oklahoma City, Okmulgee, Stillwater and Tulsa, Oklahoma.

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Perfectly Imperfect: Surviving and Thriving in Law

By Rhiannon K. Thoreson

PERFECTIONISM HAS BEEN in my DNA for as long as I can remember. In elementary school, I used to erase entire pages of homework if I didn't like how I worded something or if I made a tiny mistake. Even if it meant redoing my work, I couldn't stand turning in something that didn't feel flawless. I wasn't told I needed to be perfect – no one explicitly said that – but somehow, I internalized the idea that being *good enough* wasn't enough. I believed I had to be exceptional to be worthy.

That belief followed me into law school and then into my legal career. It shaped how I prepared for oral arguments, drafted every motion and responded to emails. I double, no, triple-checked my work. I chased the elusive goal of zero mistakes. And for a while, that perfectionism paid off. It fueled academic success, early praise and trust from mentors.

But it also came at a cost.

Early in my legal career, I made a mistake. A real one. I missed responding to an argument in a brief. It wasn't malicious. It wasn't lazy. It was a single oversight during a stressful week. But in the high-stakes world of litigation – especially as a young associate – the consequences were sharp and swift. I was asked to resign.

At the time, I was naturally devastated. The experience didn't

just bruise my ego, it cracked the very foundation I had built my identity on. If I wasn't perfect, who was I? If I could make a mistake, did I even belong in this field?

Looking back now, I see that moment as a turning point. It forced me to confront the toxic underbelly of perfectionism. Because here's the truth: Perfectionism isn't the same as striving for excellence. One is rooted in growth, the other in fear. And in the legal profession, where the stakes are often high and the margin for error is small, we're especially vulnerable to conflating the two.

But perfectionism can stifle creativity. It can erode confidence. It can keep us from taking risks, from learning, from *growing*. It can turn a human error into a full-blown identity crisis.

I've since learned that resilience matters more than perfection. That our value as lawyers – and as people – doesn't lie in never messing up. It lies in how we respond when we do.

The legal field desperately needs to have more open conversations about this. About the unrealistic standards we place on ourselves and each other. About the mental health toll of pretending we have it all together. About how normal it is to make mistakes – and how much strength it takes to own them, learn from them and keep going.

I still catch myself wrestling with perfectionism. But now, I try to pause and ask: *What am I afraid will happen if this isn't perfect?* Usually, the answer isn't life-threatening. It's ego-threatening. And that's where the work begins.

To the young attorneys out there feeling like one misstep could define their career, please know it doesn't. You are more than your worst day at work. You are more than the cases you win or lose. You are *enough*, even when you're still becoming.

And to those of us further along in our careers, let's model what it looks like to be excellent *and* human. Let's normalize mistake-making and, even more so, grace.

Perfection may have once been my compass, but now I'm guided by something far more sustainable: progress, perspective and purpose.

Ms. Thoreson is of counsel at Rosenstein, Fist & Ringold in Tulsa.

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Ms. Reardon has been recognized nationally for her work in professional responsibility, including by three consecutive appointments to Chair the American Bar Association's Standing Committee on Professionalism, by receiving the ABA's Center for Innovation Legal Rebel Award, and by receiving the ABA Center for Professional Responsibility's highest lifetime honor: The Michael Franck Professional Responsibility Award.

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