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THE OKLAHOMA BAR **Journal**

Volume 97 — No. 4 — April 2026

Business & Corporate Law





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Editor: Magdalena Way

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‘The Rule of Law and the American Dream’

The OBA Gears Up for Law Day 2026

By Amber Peckio

EVERY YEAR ON MAY 1, our nation observes the annual celebration of Law Day, an event with roots right here in Oklahoma. For OBA members, it is not just a date on the calendar; it is an opportunity to reflect on a principle that shapes nearly every part of our daily lives – the rule of law. This year’s Law Day theme, “The Rule of Law and the American Dream,” reminds us that the rule of law is not an abstract concept reserved for courtrooms or law school textbooks. It is the framework that makes the promises of the American experiment possible.

As we approach the 250th anniversary of the signing of the Declaration of Independence this year, the declaration remains the foundation of our legal system and our national identity. It is

not merely a historical document but the enduring expression of the rule of law and the promise of the American dream. Its principles of liberty, equality and the pursuit of happiness are not confined to the past. They impose a continuing obligation on the legal profession to ensure those promises are realized in the present.

Those fundamental principles are what many call the “American dream.” For generations, people have come to the United States believing that hard work and determination can build a better life. Yet that dream depends on something deeper than individual effort. It depends on stable institutions and predictable laws that treat people equally. Consider the many ways the rule of law supports that vision.

For some, the American dream begins with citizenship and the promise that individuals can become citizens through lawful processes. For others, the dream centers on owning a home or building a business. Property rights, enforceable contracts and transparent regulations give families and entrepreneurs confidence that their investments are protected. Workers and employers also rely on the rule of law. Clear labor standards, nondiscrimination protections and workplace safety rules create a system in which both sides understand their rights and responsibilities. Those expectations help build successful careers, thriving businesses and stronger communities. In short, the rule of law provides the stability that allows individuals and institutions to plan for the future.

These principles cannot be taken for granted. The rule of law continually faces challenges. Misunderstanding, misinformation and declining civic knowledge can weaken public confidence in the systems designed to protect our rights. That is why public education about the law remains so important and why the OBA enthusiastically supports the annual Oklahoma celebration of Law Day, which reminds us that we all benefit from a system where fairness, accountability and due process are the standards.

To that end, OBA members, now for 50 years, have played a special role in this celebration by participating in Ask A Lawyer, which is held annually in conjunction with Law Day on May 1. Every year, volunteer lawyers across

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IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, May 25, in observance of Memorial Day.

Also, be sure to docket these important upcoming events:

- The third annual Oklahoma Chief Justice Colloquium on Civility and Ethics will be held April 1. This event will feature guest speakers U.S. Sen. James Lankford and former Oklahoma Attorney General Michael C. Turpen. Register at ok.webcredenza.com.
- The new attorney swearing-in will be at 10 a.m. on Friday, April 24, in the House chambers at the Oklahoma state Capitol.
- Law Day will be celebrated statewide on Friday, May 1. Visit www.okbar.org/lawday for more information.
- Launching Your Law Practice will be held Monday, June 1, at the bar center in Oklahoma City. This is a no-cost, semiannual workshop for new lawyers and lawyers opening their own law practices. Register by emailing Nickie Day at nickied@okbar.org or by calling 405-416-7050. Learn more at www.okbar.org/oyp.
- The 38th annual Sovereignty Symposium, presented by the OCU School of Law, will be held June 15-16 at the OKANA Resort in Oklahoma City. Visit www.sovereigntysymposium.com to learn more about the event and register.
- The OBA Midyear Meeting will be held at the OKANA Resort in Oklahoma City on June 17-19. Registration is now open! Visit www.okbar.org/midyear to learn more and register.

KRISTIN JARMAN APPOINTED ASSOCIATE DISTRICT JUDGE FOR MURRAY COUNTY

Gov. Kevin Stitt recently appointed Kristin Jarman of Pauls Valley as the associate district judge for Murray County, replacing Associate District Judge Mark Melton, who resigned Sept. 30.

Judge Jarman's legal career includes practice in prosecution, defense, administrative, municipal, civil, family, juvenile, contract and real estate law. She has also served as an administrative law judge and municipal judge. She previously worked as a prosecutor in the district attorney's office and later as a defense attorney with the Oklahoma Indigent Defense System. She also served on the Oklahoma Board of Juvenile Affairs. Judge Jarman graduated from OSU in 2003 and then attended the OU College of Law, earning her J.D. in 2006.



DIANE VAUGHAN APPOINTED ASSOCIATE DISTRICT JUDGE FOR LOGAN COUNTY



Special Judge Diane Vaughan was recently appointed as associate district judge for Logan County, filling the position left vacant by Judge Louis A. Duel, who died after serving in this position for 16 years.

Judge Vaughan served as special judge for Logan and Payne counties for three years. Before serving as judge, she served as assistant district attorney in Logan County, worked in private practice in Guthrie and served 21 years in the Air National Guard, retiring as a JAG officer. She graduated from the OCU School of Law in 2012.

WRITE FOR THE BAR JOURNAL TO EARN MCLE CREDIT

Recently, the Oklahoma Supreme Court amended the rules for mandatory continuing legal education to include writing scholarly articles that are published in the *Oklahoma Bar Journal*. The MCLE Commission will award 6 credits per published article for each contributing author. Contact OBA Communications Director and *Oklahoma Bar Journal* Managing Editor Lori Rasmussen at lorir@okbar.org to learn more about this opportunity. Visit <https://bit.ly/3ZepRZ3> to read the Supreme Court order.

REGISTRATION IS OPEN FOR THE OBA MIDYEAR CONFERENCE



Register now for the OBA Midyear Conference! This year's meeting, which will be held June 17-19 at the OKANA Resort in Oklahoma City, will focus on CLE opportunities for all practitioners as well as programming for solo and small-firm practitioners. Just like the previous Solo & Small Firm Conference, the Midyear Conference will take place in a casual, family-friendly resort setting. We can't wait to see you there! Visit www.okbar.org/midyear to learn more and register.

VOLUNTEER FOR LAW DAY ON MAY 1

Law Day will be celebrated statewide on Friday, May 1. Ask A Lawyer, as well as other Law Day-related events, will be held across Oklahoma, and volunteers are needed to make the day a success!

There is an additional need for Spanish-speaking volunteers for Ask A Lawyer in Tulsa and Oklahoma counties throughout the day. Visit www.okbar.org/cobar to contact your county bar president for Law Day chair information.

County Law Day chairs, email communications@okbar.org with your contact information as well as information regarding your Law Day events. Visit www.okbar.org/lawday for more information.



LHL DISCUSSION GROUPS TO HOST MAY MEETINGS

Monthly Discussion Groups: The Lawyers Helping Lawyers monthly discussion group will meet Thursday, May 7, in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Thursday, May 14, in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200.

Women's Discussion Groups: The Tulsa women's discussion group will meet Tuesday, May 19, at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200; the Oklahoma City women's discussion group will also meet Thursday, May 28, 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.



LET US FEATURE YOUR WORK

We want to feature your work on "The Back Page" and the *Oklahoma Bar Journal* cover! All entries must relate to the practice of law and may include articles, reflections or other insights. Poetry, photography and artwork connected to the legal profession are also welcome. Photographs and artwork relating to featured topics may also be published on the cover of the journal. Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen at lorir@okbar.org.

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OKLAHOMA HISTORICAL SOCIETY

 OKLAHOMA J

Business Courts: A New Era for Oklahoma Commercial Litigation?

By Gary W. Derrick, Cecilee G. Van Horn and Jacob L. Fanning

IN THE SEARCH FOR ECONOMIC DEVELOPMENT, many states have turned to specialized business courts. These courts are thought to deliver judgments more quickly and predictably than courts of general jurisdiction. That should result in lower costs and reduced transaction risks for business owners and managers, thus creating a more favorable commercial environment. With the Oklahoma Legislature's passage and the governor's signing of Senate Bill 632 (SB 632)¹ in 2025, Oklahoma sought to add business courts to its list of economic development tools. SB 632 would create specialized business courts as divisions of the Oklahoma and Tulsa County district courts and task those courts with hearing specific types of actions involving business issues.² This article will: 1) generally define the term "business courts" and describe three different variants of business courts currently operating in the United States, 2) discuss the history of business courts in the United States and the state of Oklahoma, 3) provide an overview of SB 632 and 4) address the Oklahoma Supreme Court's ruling that SB 632 is unconstitutional. The Task Force for the Study of Business Courts has recommended that the Legislature amend SB 632 to meet the constitutional requirements, and the matter is currently under consideration.

WHAT ARE 'BUSINESS COURTS'?

While neither a legal term of art nor a universally defined label, the term "business court" generally refers to a state court (or a subset thereof) whose jurisdiction focuses on business and commercial civil litigation cases.³ Unsurprisingly, the lack of a universal definition has resulted in the implementation of three different types of business courts in the United States: 1) courts

with objective jurisdictional parameters, 2) courts with subjective jurisdictional parameters and 3) courts with blended jurisdictional parameters.⁴ The first category of business courts establishes a clear framework for the types of cases that may be brought within its jurisdiction.⁵ The respective enabling legislation or administrative directives creating these courts often set forth an enumerated list of

qualifying claims and actions that such courts have the authority to hear.⁶ Unlike the first type of business courts, the second type does not establish a clear framework but rather focuses on the nature of the case itself, with the respective enabling legislation or administrative directives setting forth various subjective factors to be considered for the case to be brought within such business courts' respective

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jurisdictions.⁷ The third type of business courts is a combination of the first and second types, having both objective and subjective components to the business courts' jurisdictional parameters.⁸ As discussed later, the business courts established under SB 632 appear to fall into the third category of business courts with both mandatory and discretionary jurisdictional components.

HISTORY OF BUSINESS COURTS

Business Courts in the United States

Currently, over half of the states have implemented some sort of business court or specialized docket focused on complex commercial matters. The earliest court was the Delaware Court of Chancery, which was established in 1792.⁹ The Court of Chancery is a key attraction that has made Delaware the favored state for incorporation by more than half of the publicly held corporations and two-thirds of Fortune 500 companies in the United States.¹⁰ Fast forward 200 years to the 1990s: New York, New Jersey, Illinois and North Carolina each established their own set of business courts.¹¹ Over the next three decades, 22 other states joined the ranks, making specialized business courts a common judicial feature.¹²

Business Courts in Oklahoma

The Task Force for the Study of Business Courts.¹³ In May 2024, the Legislature passed, and the governor signed, Senate Bill 473 (SB 473), creating business court-specific judicial offices in the Oklahoma and Tulsa County courts and establishing the Task Force for the Study of Business Courts.¹⁴ The task force is comprised of 11 members:

five appointed by the governor, two appointed by the president *pro tempore* of the Senate, two appointed by the speaker of the House, one appointed by the chief justice of the Oklahoma Supreme Court and one appointed by the administrative directors of the courts. The task force was created to conduct a study to analyze the implementation, effect and impact of creating a business court system in Oklahoma.¹⁵ In its study, the task force was to consider a variety of factors, including the existing Oklahoma court structure, the court structures of other states, matters that shall and shall not be heard in the business courts and the manner in which business court judges are to be selected.¹⁶ On Dec. 3, 2024, the task force submitted its preliminary findings and recommendations (the preliminary report).¹⁷ The preliminary report addressed the purpose of the business courts, the jurisdiction exercised by the business courts, the procedural processes of the business courts and the qualifications of the judges of the business courts.¹⁸

The preliminary report's stated purpose for business courts was to "streamline procedures to resolve cases faster, reducing disruptions for business and providing predictable legal environment essential for strategic planning."¹⁹ The jurisdictional scheme recommended by the preliminary report involved the business courts having the authority to exercise concurrent jurisdiction and supplemental jurisdiction relating to certain types of cases. First, the preliminary report recommended that the business courts "exercise concurrent jurisdiction and the powers of a court of equity" over cases falling within

an enumerated list.²⁰ Second, the preliminary report recommended that the business courts also have the ability to exercise supplemental jurisdiction over all pending claims that are so related to the claims provided in connection with its exercise of concurrent jurisdiction that such pending claims form part of the same case or controversy.²¹ The preliminary report also recommended specific types of cases that should not fall within the business courts' jurisdiction and that there be a procedural process implemented that allows for direct filing, *sua sponte* transfer, removal, supplemental jurisdiction and modern service requirements.²² Finally, the preliminary report outlined the task force's recommendations as it relates to judicial qualifications.²³ The report recommended that business court judges meet the following requirements: 1) be at least 35 years of age, 2) be a United States citizen and 3) be a licensed attorney in good standing in this state who has 10 or more years of experience: a) practicing complex civil business litigation, b) practicing business transaction law, c) serving as a judge of a court in this state with civil jurisdiction or d) any combination of experience described by provisos a) through c).²⁴ The preliminary report did not address the manner of judicial selection.

SB 632 and HB 1562. After considering the task force's recommendations in the preliminary report, Sen. Lonnie Paxton, Rep. Kyle Hilbert and Rep. Collin Duel authored SB 632 for consideration during the first regular session of the 61st Legislature. To enhance the likelihood of consideration, Sen. Paxton and Rep. Duel also authored House Bill 1562.²⁵ The two bills were similar but not identical.²⁶ Both bills

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Currently, over half of the states have implemented some sort of business court or specialized docket focused on complex commercial matters.

were voted out of the chamber of origin and the opposing chamber, where they were assigned to a conference committee to reconcile the differences. SB 632 was passed out of the conference committee, passed by the Senate and the House and signed by Gov. Kevin Stitt. But for the Oklahoma Supreme Court's temporary stay and subsequent ruling finding SB 632 unconstitutional,²⁷ SB 632 would have taken effect Sept. 1, 2025.²⁸

DISCUSSION OF SB 632²⁹

Creation and Location of Business Court Divisions

SB 632 creates business court divisions within the district courts of any judicial district containing a county with a population greater than 500,000.³⁰ Business Court Division I is to be located in Oklahoma County and headquartered in Oklahoma City, and Business Court Division II is to be located in Tulsa County and headquartered in Tulsa.³¹ SB 632 excludes business courts from the requirement that district courts be housed in the county seat of every county in the district, in any city where a superior court held sessions and at such other places within the district as the district and associate district judges shall prescribe.³²

Business Court Judges

SB 632 provides for the appointment, selection and qualifications of judges of the business courts.³³ The bill also addresses business court judge compensation and provides for staffing.³⁴

Appointment.³⁵ Each business court will have one business court judge appointed by the governor with the advice and consent of the Senate.³⁶ The governor is to make the appointment from three candidates provided by the speaker of the House.³⁷ If the governor rejects the list provided by the speaker, the speaker will provide a second list; however, if such a list is not provided within 40 days, the governor may appoint any person who meets the qualifications required of a business court judge.³⁸

Qualifications. To meet the qualifications of a business court judge, candidates must be: 1) at least 35 years of age, 2) a United States citizen and 3) a licensed attorney in good standing in this state with 10 or more years of experience: a) practicing complex civil business litigation, b) practicing business transaction law, c) serving as a judge or clerk of a court with civil jurisdiction or d) any combination of experience

described in provisos a) through c), totaling 10 years.³⁹

Terms, vacancies and temporary judgeships.⁴⁰ Business court judges will serve for eight-year terms, and any vacancies will be filled in the same manner of appointment as set forth in Section 5.A.1.⁴¹ To aid business court judges in caseload management, the chief justice of the Oklahoma Supreme Court may, upon the request of a business court judge currently serving, appoint district court judges to temporarily act as business court judges.⁴²

Salaries, compensation and staff.⁴³ SB 632 adds business court judges and their salaries to the statutory list of salaries for district court judges, associate district court judges and special judges. Business court judges are compensated at the level of associate justices of the Oklahoma Supreme Court, which was \$173,469 annually as of 2025.⁴⁴ The bill authorizes a secretary-bailiff for each business court judge and gives business court judges the authority to appoint a law clerk.⁴⁵

Jurisdiction

SB 632 fixes the jurisdictional parameters of Oklahoma business courts.⁴⁶ Business courts may hear actions arising under or relating to:

- The Uniform Arbitration Act, Section 1851 *et seq.* of Title 12 of the Oklahoma Statutes;
- The Uniform Commercial Code, Section 1-101 *et seq.* of Title 12A of the Oklahoma Statutes;
- The Oklahoma General Corporation Act, Section 1001 *et seq.* of Title 18 of the Oklahoma Statutes;

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- The Oklahoma Limited Liability Company Act, Section 2000 *et seq.* of Title 18 of the Oklahoma Statutes;
- The Oklahoma Revised Uniform Partnership Act, Section 1-100 *et seq.* of Title 54 of the Oklahoma Statutes;
- The Uniform Limited Partnership Act of 2010, Section 500-101A *et seq.* of Title 54 of the Oklahoma Statutes;
- The Oklahoma Uniform Securities Act of 2004, Section 1-101 *et seq.* of Title 71 of the Oklahoma Statutes;
- The Uniform Trade Secrets Act, Section 85 *et seq.* of Title 78 of the Oklahoma Statutes;
- Shareholder and unitholder derivative claims;⁴⁷
- The internal affairs of businesses, including but not limited to rights or obligations between or among business participants regarding the liability or indemnity of business participants, officers, directors, managers, trustees, controlling shareholders or members, or partners;
- A complaint that includes a professional malpractice claim, if arising out of a business dispute;
- Tort claims between or among two or more business entities or individuals as to their business or investment activities if relating to contracts, transactions or relationships between or among such entities or individuals;

- Claims for breach of contract, fraud or misrepresentation between businesses arising out of business transactions or relationships;
- Claims arising from e-commerce agreements, technology licensing agreements, including but not limited to software and biotechnology license agreements, or any other agreement involving the licensing of any intellectual property right, including but not limited to an agreement relating to patent rights; and
- Claims involving commercial real property.⁴⁸

Generally, when damages are requested in these actions, the business courts may only hear cases involving an amount in controversy of at least \$500,000. Where a claimant seeks equitable relief, the \$500,000 requirement will not apply.⁴⁹

Business courts also have jurisdiction to hear “complex

cases.”⁵⁰ The determination of what constitutes a “complex case” is a fact-intensive inquiry but generally means an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants, to expedite the case, to keep costs reasonable and to promote effective decision-making by the court, parties and counsel.⁵¹ In making such a determination, SB 632 outlines a variety of factors for the business courts to consider in determining whether a case is “complex.”⁵² The bill also provides that actions will presumptively be considered “complex” if they involve one or more of the following types of claims: 1) antitrust or trade regulation claims; 2) intellectual property matters including but not limited to trade secrets, copyrights and patents; 3) securities claims or investment losses involving more than two parties; 4) environmental or toxic tort claims involving more than two parties; 5) ownership or control of business claims; 6) insurance coverage claims; 7) construction defect claims involving many parties or



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structures; 8) product liability claims; or 9) mass tort claims.⁵³

Actions involving any of the following are expressly excluded from a business court's jurisdiction:

- The Oklahoma Consumer Protection Act, Section 751 *et seq.* of Title 15 of the Oklahoma Statutes;
- Actions against a governmental entity or political subdivision under Title 19 of the Oklahoma Statutes or under the Governmental Tort Claims Act, Section 151 *et seq.* of Title 51 of the Oklahoma Statutes;
- Guardianship matters under Title 30 of the Oklahoma Statutes;
- Probate matters under Title 58 of the Oklahoma Statutes;
- A deceptive trade practice as set forth in Section 53 of Title 78 of the Oklahoma Statutes, to the extent such matter is not a business dispute;
- Residential landlord and tenant claims;
- Personal injury and wrongful death actions;
- Domestic relations matters;
- Foreclosures;
- Individual consumer claims or transactions involving a retail customer of goods or services who uses or intends to use such goods or services primarily for personal, family or household purposes, provided, however, this paragraph shall not be construed to preclude the court from exercising jurisdiction over mass actions or class actions involving such individual consumer claims;

- Collections in matters involving a corporation or other entity subject to the farming and ranching statutes of this state or an individual farmer; or
- Cases that would generally be considered consumer transactions or human relations matters.⁵⁴

Actions within the subject matter jurisdiction of a business court may be filed in Business Court Division I or Business Court Division II.⁵⁵ Cases may be filed in Division I when the action arises in a county located within the jurisdiction of the United States District Court for the Western District of Oklahoma and in Division II when the action arises in a county located within the jurisdiction of the United States District Court for the Northern District of Oklahoma or the Eastern District of Oklahoma.⁵⁶ If a business court determines that it does not have jurisdiction over the action, the action is to be either transferred to a district court in a county with jurisdiction over the action or dismissed without prejudice to the rights of the parties.⁵⁷

Other Procedural Matters

SB 632 addresses a variety of procedural matters, including venue, removal, jury trials and filing fees.⁵⁸

Venue. If venue is deemed to be improper, the business court shall transfer the action to the court of proper venue, but the business court judge shall continue to preside over the action.⁵⁹ Additionally, district courts may transfer actions to business courts of proper venue if the district court judge determines that the business court has proper subject matter jurisdiction over the action.⁶⁰

Removal. At any time during the pendency of an action in which the business court would have jurisdiction, the parties may file by agreement a notice of removal to the business court. Regardless of whether agreement is reached, a party may remove an action to a business court if the notice of removal is filed within 30 days after the date the party requesting removal discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action, provided, however, that in no event shall a party have less than the time to respond to the action than to remove to the business court.⁶¹ The notice of removal shall be filed with the business court and the district court in which the action was originally filed.⁶² Upon receipt of the notice, the clerk of the court in which the action was originally filed shall immediately transfer the action to the business court in accordance with the Oklahoma Pleading Code, and the court clerk shall assign the action to the appropriate division of the business court.⁶³

Jury trials and nonjury trials.

Jury trials may be reserved by a party if a demand is made within the period required by law and shall be conducted by the business court judge and held in the county where the contract stipulates proper venue, where the action was originally filed, if removed, or in any county of proper jurisdiction if originally filed in a business court.⁶⁴ Nonjury trials are required to be resolved within 12 months of the filing of the action unless both parties agree to a longer resolution period or upon a finding by the business court of extraordinary cause for such an extension,

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which shall be appealable to the Oklahoma Supreme Court.⁶⁵ An extension of the nonjury trial disposition period must be memorialized in writing by all parties and approved by the court.⁶⁶

Whether the parties have a right to trial by jury may depend on the relief sought. Where damages are sought, the \$500,000 minimum amount in controversy will apply, and the parties will have a right to a jury trial.⁶⁷ If equitable relief is sought, including derivative actions, the \$500,000 minimum will not apply, and litigants will not have a right to a jury trial.⁶⁸

Filing/fees. The Oklahoma Supreme Court is required to provide for electronic filing of documents in the business courts of this state and shall promulgate rules for the filing of documents transmitted by electronic devices.⁶⁹ A fee of \$1,500 shall be charged and collected by the court clerk at the time of filing any action in, or upon the filing of a motion for removal to, a business court division.⁷⁰

LITIGATION TO BLOCK SB 632

On June 26, 2025, two Oklahoma attorneys (the petitioners) filed an action in the Oklahoma Supreme Court asking the court to assume original jurisdiction, declare SB 632 unconstitutional and enjoin the act's effectiveness.⁷¹ The court assumed original jurisdiction, heard the matter on July 15, 2025, and issued a temporary stay.⁷² The court issued its opinion on Oct. 7, 2025.⁷³ After disposing of the procedural issues of assuming original jurisdiction and the standing of petitioners, the court held that SB 632 is unconstitutional.

The court ruled that business courts are divisions within the district courts and must operate

With the possibility of significant advantages, Oklahoma could benefit from the implementation of business courts.

within the constitutional framework of the district courts.⁷⁴ Since business court judges are district court judges, they must be appointed, serve terms and be elected like other district court judges. In SB 632, they are not. The bill provides for appointment by the governor from a nominee list from the speaker of the House. Under the Oklahoma Constitution, district court judges are nominated by the Judicial Nominating Commission.⁷⁵ The JNC operates as a nonpartisan committee vested with the authority to determine whether applicants for judicial vacancies meet the requisite qualifications. From each pool of applicants for a vacant judicial office, the JNC nominates three candidates, from whom the governor appoints one.⁷⁶ Under SB 632, business court judges would serve eight-year terms with reappointment by the governor. The constitutional protocol, however, provides for a four-year term⁷⁷ at the end of which the district court judge stands for election.⁷⁸ Under the court's reasoning, business court judges would also presumably receive the same compensation as other district court judges.⁷⁹

CONCLUSION

With the passage of SB 632, Oklahoma intended to join the ranks of the business court movement. The advantages of the specialized courts – quicker decisions, lower costs and more predictable outcomes – have proven popular. Since the court has determined SB 632 to be unconstitutional, the question is now whether the governor and the Legislature can address the court's concerns and complete what SB 632 started. Hopefully, that will happen. With the possibility of significant advantages, Oklahoma could benefit from the implementation of business courts.

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ENDNOTES

1. SB 632, 2025 Leg., Reg. Sess. (Okla. 2025).
2. *Id.*
3. See Lee Applebaum, Mitchell Bach, Eric Milby and Richard L. Renck, "Through the Decades: The Development of Business Courts in the United States of America," 75 *The Bus. Lawyer* 2053, 2054 (2020) ("Applebaum, *et al.*"); Mitchell L. Bach and Lee Applebaum, "A History of Business Courts and Jurisdiction of Business Courts in the Last Decade," 60 *The Bus. Lawyer*, 147, 223-226 (2004).
4. Applebaum, *et al.*, 2055.
5. *Id.*
6. *Id.* at 2055. These types of cases range from business governance disputes and shareholder derivative actions to cases involving antitrust, trade secrets and unfair competition.
7. *Id.*
8. *Id.* at 2055, 2026.
9. *Id.* at 2057, 2058.
10. See Delaware Division of Corporations: 2023 Annual Report, Delaware Department of State, A Message from the Secretary of State Jeffrey W. Bullock, <https://bit.ly/4sdTJKX>.
11. Applebaum, *et al.*, 2058-2060.
12. See Benjamin Raymond Norman and Benjamin M. Burningham, "Recent Developments in Business Courts 2024," *Business Law Today* (March 7, 2024), <https://bit.ly/3OyDujL>.
13. The 2024 effort was not the first attempt to create business courts in Oklahoma. In 2004, a wide-ranging tort reform package was passed, which included a directive to the Oklahoma Supreme Court to adopt rules creating business courts within the Oklahoma and Tulsa County district courts. "Tort Reform – House Bill 2661 (Adair/Hobson)," *Okla. State Sen. Leg. Brief* (August 2004), <https://bit.ly/4u0BfWS> (codified at 20 O.S. §91.7). The courts were never funded, however, and the Supreme Court never adopted rules to implement the business courts. Rather than resurrecting SB 632, it is theoretically possible that the Supreme Court could implement the business courts by rule under this latent statute.
14. SB 473, 2024 Leg., Reg. Sess. (Okla. 2025), codified at 20 O.S. §§91.7a, 92.8f and 92.15e.
15. *Id.* at §2.E (codified at 20 O.S. §§91.7a.E).
16. *Id.*
17. *Task Force for the Study of Business Courts* (Dec. 3, 2024) (unpublished) (on file with author).
18. *Id.*
19. *Id.*
20. *Id.* The list included claims arising under or relating to the Oklahoma Uniform Arbitration Act (12 O.S. §1851, *et seq.*), the Oklahoma Uniform Trade Secrets Act (78 O.S. §85, *et seq.*), the Oklahoma Uniform Securities Act of 2004 (71 O.S. §1-101, *et seq.*), the Oklahoma Uniform Commercial Code (12A §1-101, *et seq.*), the Oklahoma General

Corporation Act (18 O.S. §1001, *et seq.*), the Oklahoma Revised Uniform Partnership Act (54 O.S. §1-100, *et seq.*), the Oklahoma Limited Liability Company Act (18 O.S. §2000, *et seq.*), shareholder or unitholder derivative actions, internal affairs disputes, tort claims between two or more businesses as to their business or investment activities, breach of contract or fraud actions between businesses arising out of business transactions or relationships, or claims arising from e-commerce agreements, technology licensing agreements or intellectual property rights.

21. *Id.*
22. *Id.* Matters excluded from the business court's jurisdiction included claims arising under federal or state law involving: residential landlord and tenant disputes (to the extent they are not business disputes), cases arising under the Oklahoma Deceptive Trade Practices Act, cases arising under the Oklahoma Consumer Protection Act, matters arising under Title 58 relating to probate and matters by or against any governmental entity, political subdivision, arising under Title 19 or arising under the Oklahoma Governmental Tort Claims Act.
23. *Id.*
24. *Id.*
25. HB 1562, 2025 Leg., Reg. Sess. (Okla. 2025).
26. HB 1562 provided for compensation like a district court judge, a term of eight years and appointment by a joint committee on judicial appointment that proposes five nominees to the governor. The joint committee consists of 10 members, five of whom are appointed by the Senate president *pro tempore* and five by the House speaker. Four of each group would be from the majority party and one from the minority party. The president *pro tempore* and speaker would appoint the chair of the committee on a rotating two-year basis. *Id.* at §5. The bill had a list of matters excluded from the jurisdiction of the business courts. *Id.* at §6. It would have required an initial filing fee of \$2,500 and a \$50 fee for each motion. *Id.* at §10. It directed the Supreme Court and the Administrative Office of the Courts to provide for electronic filing. *Id.* at §11. As introduced, SB 632 provided for all judicial appointments by the governor and a six-year term of service. The bill did not list matters that would lie beyond the business courts' jurisdiction. The bill did not provide for a filing fee or electronic filings. As SB 632 was reconciled, compromises were made regarding judicial appointments and other provisions from HB 1562 were added.
27. See Section IV of this article.
28. SB 632, at §9.
29. SB 632 amends a variety of sections within Title 20 of the Oklahoma Statutes relating to Oklahoma courts and codifies new laws within Title 20 styled as Sections 91.7b, 91.7d, 91.7e and 91.7f.
30. SB 632, at §5 (amending 20 O.S. §91.7). The population component is determined according to the latest Federal Decennial Census.
31. *Id.* at §6. Both business court divisions shall be quartered in a location as determined by the chief justice of the Supreme Court in consultation with any state officials or private parties needed to secure appropriate court and office space. *Id.*
32. *Id.* at §2 (amending 20 O.S. §95.1.A).
33. *Id.* at §5 (codified at 20 O.S. §91.7b) and §§2 and 4 (amending §92.1A and §125.A).
34. *Id.* at §4 (codified at §92.1A).
35. The Oklahoma Supreme Court held the method of appointment was unconstitutional,

since it departed from the method applicable to other district court judges. To satisfy the constitutional requirements and implement the business courts, the Legislature must amend SB 632 to adopt a comparable appointment methodology. See discussion at endnote 72.

36. *Id.* at §5.A.1 (codified at 20 O.S. §91.7b).
37. *Id.* The appointment process is a notable deviation from the typical nominating body for district court vacancies – the Judicial Nominating Commission. See text at endnote 67.
38. *Id.* (codified at 20 O.S. §91.7b).
39. *Id.* at §5.A.2 (codified at 20 O.S. §91.7b). The qualifications for business court judges are more stringent than those for other district court judges. But the added qualifications may pass constitutional scrutiny given the specialized nature of the business courts.
40. The terms and the filling of vacancies was another area that departs from that of regular district court judges and is unconstitutional. The Legislature must presumably conform these methods to match the term and filling of vacancies for other district court judges.
41. *Id.* at §§5.B.1.-5.B.2 (codified at 20 O.S. §91.7b). The initial judge for the Tulsa County business court division shall serve a term of four years beginning Sept. 1, 2025. The eight-year term for business court judges varies from the four-year term designated for district and associate district judges, pursuant to Article 7, Section 8(f) of the Oklahoma Constitution.
42. *Id.* at §5.B.3.
43. The level of compensation for business court judges is higher than that of other district court judges. The Supreme Court did not address this difference in its opinion, and whether the higher level would pass constitutional muster is uncertain.
44. *Id.* at §4 (codified at 20 O.S. §92.1A).
45. *Id.*
46. *Id.* at §6 (codified at 20 O.S. §91.7c).
47. *Steinway v. Griffith Consol. Theatres*, 1954 OK 156, ¶¶7-8, 273 P.2d 872. A shareholder derivative action is a claim in the court of equity, and the litigants are not entitled to a jury trial.
48. SB 632, at §6.B. Business courts are also granted the ability to exercise supplemental jurisdiction over any other claim related to a case or controversy within the court's jurisdiction that forms part of the same case or controversy. *Id.* at §6.E.
49. *Id.* at §6.A. The relief sought will also determine whether the parties have a right to a jury trial. See discussion at endnotes 59 through 63.
50. *Id.* at §6.C.
51. *Id.*
52. *Id.* Those factors include but are not limited to whether the action is likely to involve: 1) numerous hearings and pretrial and dispositive motions raising difficult or novel legal issues that will be time-consuming to resolve; 2) management of a large number of witnesses or a substantial amount of documentary evidence; 3) management of a large number of separately represented parties; 4) multiple expert witnesses; 5) coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court; 6) substantial post-judgment judicial supervision; or 7) legal or technical issues of complexity.
53. *Id.* SB 632 clarifies that the intent of the "complex case" analysis is not intended to include individual consumer claims or transactions involving a retail customer of goods or services who uses or intends to use such goods or services

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primarily for personal, family or household purposes but may permit business courts with the ability to exercise jurisdiction over mass actions or class claims involving individual consumer claims.

54. *Id.* at §6.F.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at §§7-8 (codified at 20 O.S. §§91.7d and 91.7e).

59. *Id.* at §7.

60. *Id.*

61. *Id.* If an application for temporary injunction is pending on the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action, then the notice of removal shall be filed not later than 30 days after the date the application is granted, denied or denied as a matter of law. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at §8 (codified at 20 O.S. §91.7e).

65. *Id.*

66. *Id.* at §8.B.

67. Okla. Constitution, Art. 2, §19; SB 632 at §6.A.

68. *Id.* at §6.A; see *Waggoner v. Johnston*, 1965 OK 192, ¶10, 408 P.2d 761 (holding the right of a trial by jury does not extend to equitable actions).

69. SB 632, at §9.A (codified at 20 O.S. §91.7f).

70. *Id.* at §9.B.

71. *White and Waddell v. Gov. Stitt, President Pro Tempore Paxton, and Speaker Hilbert*, No. 123222 (Okla. Sup. Ct. filed Jun. 26, 2025) (*White*).

72. Murray Evans, "Oklahoma Supreme Court quickly stays new law that would establish business courts," *The Oklahoman* (Jul. 15, 2025, 6:20 p.m.), <https://bit.ly/4kVyO3D>.

73. *White*, 2025 OK 68, ___ P3d ___.

74. *Id.* at ¶¶24, 25 and 26. See Okla. Const. Art. 7.

75. Okla. Const. Art. 7B, §4. The constitutional provisions for judicial appointment and other matters regarding the judiciary were adopted by three votes of the people in 1966 and 1967. The state questions and related implementing legislation were a judicial reform package designed to depoliticize the judiciary after an Oklahoma Supreme Court scandal involving vote buying. Bob Burke, "From the Ashes of Scandal Came Court Reform," *OBJ* (May 2023); see also "About JNC: Rules of the Oklahoma Judicial Nominating Commission," Oklahoma Judicial Nominating Commission, <https://okjnc.com/about-jnc> (May 4, 2021).

76. *Id.*

77. *Id.* at Art. 7, §8

78. *Id.* at §9.

79. The court specifically identified the manner of appointment, term of service and lack of election as unconstitutional features for the business court judges. Although not specifically identified, the reasoning would suggest that the higher compensation of business court judges would also be unconstitutional since the constitutional and statutory framework implies that all district court judges (including business court judges) are compensated at the levels fixed by statute. See 20 O.S. §92. Some other distinctions between the business court judges and district court judges might pass muster. SB 632 imposes more stringent qualification requirements for business court judges. The Oklahoma Constitution addresses qualifications and concludes by saying that district court judges "shall have such additional qualifications as may be prescribed by statute." *Id.* at §9. This leeway and the nexus of the qualifications to the business court purposes might be sufficient to preserve the constitutionality of those qualifications.



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Recent Developments for Corporations in Delaware and Their Implications

By Jinah Jung



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THE DELAWARE GENERAL CORPORATION LAW (DGCL) allows immense freedom for a business to adopt the most appropriate terms for the organization, finance and governance of its enterprise.¹ To keep it current and maintain its national preeminence,² in 2025, the Delaware Legislature enacted two significant amendments to the DGCL: Senate Bill 21 and Senate Bill 95.

Although there have not been corresponding updates in Oklahoma, Delaware's developments merit close attention due to their direct impact on Oklahoma corporations incorporated in Delaware. Even for entities not incorporated there, Delaware law remains influential, as the Oklahoma Supreme Court has acknowledged the similarities between the two jurisdictions and frequently cites Delaware decisions as persuasive authority in the absence of binding precedent.³ Notably, certain provisions of Senate Bill 21 are currently under review by the Delaware Supreme Court, a topic this article examines in detail later.⁴ The court's interpretation could significantly influence how the law is applied going forward.

This article will examine the recent updates and independently

detail the context of each revised section.

SENATE BILL 21

First, Senate Bill 21 (SB 21) was passed by the Delaware Legislature in March 2025 and signed into law by Gov. Matt Meyer on March 25, 2025. The legislation was a direct and hurried response to recent Delaware court rulings, including the Delaware Supreme Court's 2024 decision in *In re Match Group Inc. Derivative Litigation*.⁵

In *Match Group*, minority stockholders challenged a series of transactions by which a controlling stockholder effectuated a reverse spinoff.⁶ The Court of Chancery applied the business judgment rule, finding that the defendants satisfied the *Kahn v. M&F Worldwide Corp. (MFW)* framework⁷ through approval

by an independent and disinterested "separation committee" and a majority of uncoerced, fully informed and unaffiliated stockholders.⁸ On appeal, stockholders challenged the Court of Chancery's rulings with respect to whether the special committee was independent and whether the stockholder vote was fully informed.⁹ The defendants argued on appeal that the Court of Chancery properly applied the *MFW* framework.¹⁰ Defendants argued, in the alternative, that because the case did not involve a freeze-out transaction, the use of either an independent committee or minority vote procedural devices was sufficient to invoke business judgment review.¹¹ The Supreme Court of Delaware found the Court of Chancery had improperly applied the business

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judgment rule and remanded the case for the Court of Chancery to analyze the transaction, applying the entire fairness standard.¹² The court reasoned instead that, to satisfy *MFW*, the special committee must be wholly independent, and, therefore, one member's lack of independence would destroy the entire special committee's independence for purposes of *MFW*.¹³ The court also held that the *MFW* framework applies to all controlling stockholder transactions whereby the controller obtains a unique nonratable benefit, reasoning that a controlling stockholder has inherently coercive authority over the board and its minority stockholders in any transaction setting, not only in freeze-out mergers.¹⁴

This decision has prompted concerns among corporate boards and controlling stockholders, as it makes it more challenging for conflicted transactions to qualify for protection under the business judgment rule. Indeed, SB 21 overrules *Match Group* and lessens the procedural requirements for a controller transaction to evade the entire fairness review standard.¹⁵ SB 21's primary focus was to create "safe harbors" for conflicted corporate transactions and restrict stockholders' access to corporate books and records by specifying and narrowing the categories of documents available for inspection.

Safe-Harbor (§§144(a), 144(b))

Section 1 amends §144 of Title 8 to provide safe harbor procedures for acts or transactions in which one or more directors or officers, as well as controlling stockholders and members of control groups, have interests or relationships that might render them interested

or not independent with respect to the act or transaction.¹⁶ Under revised §144(a), certain acts or transactions involving such directors or officers will be protected if approved or ratified by a majority of the disinterested directors or by a majority of the votes cast by the disinterested stockholders entitled to vote thereon in each case upon disclosure or in full knowledge of the material facts giving rise to the conflict or potential conflict.¹⁷ In addition, the amendments define which parties constitute a controlling stockholder or control group and provide safe harbor procedures that can be followed to insulate from challenge specified acts or transactions from which a controlling stockholder or control group receives a unique benefit.¹⁸ Under the new §144(b), a controlling stockholder transaction that does not constitute a "going private transaction" may be entitled to the statutory safe harbor protection if it is approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors or approved or ratified by a majority of the votes cast by the disinterested stockholders.¹⁹ Under the new §144(c), a controlling stockholder transaction that constitutes a "going private transaction" may be entitled to the statutory safe harbor protection if it is negotiated and approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors and approved or ratified by a vote of a majority of the votes cast by the disinterested stockholders entitled to vote thereon.²⁰ The amendments to §144 also set forth criteria for determining the independence and disinterestedness of directors and stockholders.²¹ The

amendments provide that controlling stockholders and control groups, in their capacity as such, cannot be liable for monetary damages for breach of the duty of care.²² The amendments do not displace any safe harbor procedures or other protections available at common law.²³

Inspections of Books and Records (§220)

Section 2 amends §220 of Title 8 to define the materials a stockholder may demand to inspect pursuant to a request for books and records of the corporation.²⁴ The amendments also set forth certain conditions a stockholder must satisfy in order to make an inspection of books and records.²⁵ The amendments make clear that information from books and records obtained by a stockholder from a production under §220 will be deemed to be incorporated by reference into any complaint filed by or at the direction of a stockholder on the basis of information obtained through a demand for books and records.²⁶ The new §220(b)(4) preserves whatever independent rights of inspection exist under the referenced sources and does not create any rights, either expressly or by implication.²⁷ The new §220(f) provides that if the corporation does not have specified books and records, including minutes of board and committee meetings, actions of the board or any committee, financial statements and director and officer independence questionnaires, the Court of Chancery may order the production of additional corporate records necessary and essential for the stockholder's proper purpose.²⁸

Because Section 3 states that the amendments "apply to all acts and transactions, whether

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occurring before, on, or after the enactment date of this Act,” except that it does not apply to pending or completed lawsuits, a series of litigation followed in Delaware, particularly from minority stockholders.²⁹ In June, the Delaware Supreme Court accepted two certified questions from *Clearway*.³⁰

The certified questions now in front of the Delaware Supreme Court en banc are:

- 1) “Does Section 1 of Senate Bill 21, codified at 8 Del. C. §144—eliminating the Court of Chancery’s ability to award ‘equitable relief’ or ‘damages’ where the Safe Harbor Provisions are satisfied—violate the Delaware Constitution of 1897 by purporting to divest the Court of Chancery of its equitable jurisdiction?”³¹
- 2) “Does Section 3 of Senate Bill 21 – applying the Safe Harbor Provisions to plenary breach of fiduciary claims arising from acts or transactions that occurred before the date that Senate Bill 21 was enacted – violate the Delaware Constitution of 1897 by purporting to eliminate causes of action that had already accrued or vested?”³²

SENATE BILL 95

Senate Bill 95 (SB 95) was introduced April 8, 2025, and signed into law by the governor on June 30, 2025. It took effect Aug. 1, 2025. This act continues the practice of amending the DGCL periodically to keep it current and maintain its national preeminence.³³ Sections 1, 3 and 4 amend §§102(f), 109(b) and 115 so that the same statutory safeguards that apply to certificate



and bylaw provisions regulating internal corporate claims will also apply to certificate and bylaw provisions addressing the intracorporate affairs claims permitted under the reasoning of the *Salzberg*³⁴ decision.³⁵ In *Salzberg*, the Delaware Supreme Court held that corporate charter provisions that require claims under the Securities Act of 1933 (the “Securities Act”) to be filed in federal court are facially valid.³⁶ The following outlines the key amendments and additional provisions contained in SB 95.

Forum Selection Provisions (§115)

Amended §115 specifies that a certificate of incorporation or bylaw provision addressing intracorporate affairs claims must be consistent with applicable jurisdictional requirements and must allow stockholders to bring the claims in at least one court in Delaware that has jurisdiction over such claims.³⁷ Rather than specifically defining the types of noninternal claims that constitute intracorporate affairs claims, amended §115 authorizes

forum selection provisions that relate to “the business of the corporation, the conduct of its affairs, or the rights or powers of the corporation or its stockholders, directors or officers.”³⁸

Fee-Shifting Provisions (§§102(f), 109(b))

In 2014, the Delaware Supreme Court ruled a fee-shifting bylaw in a nonstock corporation as facially valid.³⁹ The decision concerned a private tennis association, but it led some public corporations to try to add similar fee-shifting provisions to their own bylaws to discourage litigation. Then, in 2015, the Legislature swiftly amended the DGCL to invalidate the type of fee-shifting provisions in connection with an internal corporate claim.⁴⁰ In 2025, through SB 95, the Legislature built upon the 2015 amendment by strengthening the existing ban and expanding it to cover certain intracorporate affairs claims.⁴¹

By adding “or in connection with any other claim that a stockholder, acting in its capacity as

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Oklahoma has not yet adopted updates corresponding to Delaware’s 2025 DGCL amendments, but these developments merit close attention.

a stockholder or in the right of the corporation, has brought in an action, suit or proceeding” to the end of pre-2025 amendment §§102(f) and 109(b) – §102 governing the certificate of incorporation and §109 governing the bylaws – the provision expands protections for stockholders by prohibiting fee-shifting in suits brought in their capacity as stockholders or on behalf of the corporation.⁴²

Sections 102(f) and 109(b) have expanded protection for stockholders. Prior to the 2025 amendments, fee-shifting provisions could not be included in a corporation’s certificate of incorporation or bylaws with respect to internal corporate claims. This meant companies were prohibited from shifting attorney fees when the claim involved internal corporate matters. Internal corporate claim is a defined term that includes 1) claims based upon a violation of a duty by a current or former director or officer or stockholder in such capacity or 2) claims over which the Delaware Court of Chancery has jurisdiction under Title 8.⁴³ Under the amended provisions, the restrictions on fee-shifting now extend beyond internal corporate claims. Put simply, even if

a claim does not involve internal affairs, if it is brought in the stockholder’s capacity or in the right of the corporation, the company may not shift fees. However, this protection does not apply when the company initiates a claim against the stockholder. Additionally, the Legislature clarified that the amended §102(f) and §109(b) do not prohibit fee-shifting provisions if they are included in a stockholder agreement or other written instrument signed by the stockholder against whom the provision is to be enforced.⁴⁴

Certificate of Correction (§103(f))

In addition to correcting a previously filed instrument, a certificate of correction may nullify a previously filed instrument by specifying the inaccuracy or defect with respect to such previously filed instrument and providing that the previously filed instrument is nullified.⁴⁵ A statement that the previously filed instrument is nullified or void, or a statement with words of similar meaning, will constitute a sufficient provision for the nullification.⁴⁶

Registered Office and Agent (§§131(b), 132(b))

The amendments to §131(b) provide that all references in Title 8 to a corporation’s “registered office” in Delaware shall be deemed to mean and refer to the address of the registered agent located in the state that has been appointed to accept service of process and otherwise perform the duties of a registered agent.⁴⁷ The amendments also delete the provisions in §131(b) that, in certain instances, deemed a corporation’s registered office to be the corporation’s principal office or principal place of business in the state for purposes of Title 8 and the certificate of incorporation.⁴⁸ As amended, Title 8 does not include provisions that automatically treat a corporation’s registered office as a principal office or a principal place of business of the corporation.⁴⁹ Also, amended §131(b) specifies that a registered agent may not perform its duties or functions solely through the use of either or both of a virtual office or the retention by the agent of a mail forwarding service.⁵⁰ Amended §132(b) defines “virtual office” as the performance of duties or functions solely through the internet or solely through other means of remote communication.⁵¹

Fractions of Shares (§155)

The new amendment eliminates the ability of a corporation to issue scrip or warrants in bearer form in lieu of issuing fractional shares of stock.⁵² Amended §155 continues to permit corporations to issue scrip or warrants in registered form.⁵³ The amendment is intended to bring §155 in line with the Corporate Transparency Act, 31 U.S.C. §5336(f),

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which prohibits corporations from issuing certificates in bearer form for either a whole or a fractional interest in an entity.⁵⁴

Merger Filings (§252(c))

Section 8 amends §252(c), which lists the information that a corporation must include in a certificate filed with the secretary of state to merge or consolidate domestic corporations with foreign corporations.⁵⁵ The amendments delete from §252(c) a requirement that a certificate of merger or consolidation list the authorized capital stock of each foreign corporation that has ceased to exist as a result of the merger or consolidation.⁵⁶

Certificate of Revocation of Dissolution or Restoration (§§311, 311(a)(4))

Section 9 amends §311, which addresses the procedures for revoking the dissolution of a corporation and restoring an expired corporation.⁵⁷ Amended §311(a)(4) requires that a certificate of revocation of dissolution or certificate of restoration state the date of filing of the corporation's original certificate of incorporation with the secretary of state and state the date of filing of the corporation's certificate of dissolution with the secretary of state.⁵⁸

Revival of Certificate of Incorporation (§312)

Section 10 amends §312, which enables a corporation to revive its certificate of incorporation after the certificate has become forfeited or void.⁵⁹ Amended §312(g) addresses circumstances when a corporation has been revived under §312 and later files a certificate of validation under §204 to ratify one or more defective

corporate acts.⁶⁰ If the certificate of validation relates to a time during which the corporation was forfeited or void, amended §312(g) requires the corporation to file the annual franchise tax reports and pay the annual franchise taxes that would have been required to be filed and paid during the period the certificate of incorporation had been forfeited or void.⁶¹ The franchise taxes owed include the interest accrued on the taxes, and the filings and payments must be made at the time the certificate of validation is filed.⁶²

Foreign Corporation's Reinstatement (§377)

Section 377 addresses the procedures that a foreign corporation must follow to reinstate its qualification to do business in Delaware after the qualification has been forfeited under §132 or §136.⁶³ In connection with such a reinstatement, amended §377(e) requires a foreign corporation to file all annual reports and pay all required fees that would have been required to be filed or paid during the time the foreign corporation's qualification to do business in Delaware had been forfeited.⁶⁴

Reports (§502(a))

Section 12 amends §502, which requires a corporation to file an annual report with the secretary of state.⁶⁵ Amended §502(a) requires that the report disclose the nature of the business of the corporation and confirms that no office of any registered agent may be disclosed as the address of the principal place of business of the corporation, except when the corporation maintains its principal place of business in Delaware and serves as its own registered agent.⁶⁶ The

paragraphs of amended §502(a) have also been renumbered.⁶⁷

Franchise Taxes (§503)

Section 13 amends §503, which provides the rates and means of computing franchise taxes.⁶⁸ Amended §503(e) provides that the filing of a certificate of validation to ratify one or more defective corporate acts pursuant to §204 will not reduce the interest owed on the franchise taxes owed for prior periods and specifies that a corporation is not entitled to a franchise tax refund for any period prior to the filing of the certificate of validation.⁶⁹ The amendments also repeal §503(h), which specified an alternative franchise tax rate for regulated investment companies.⁷⁰

Refund (§505)

Section 14 amends §505 by clarifying that a corporation is not entitled to a refund of taxes, penalties or interest in connection with filing a certificate of correction under §103(f) or a certificate of validation under §204.⁷¹

OKLAHOMA

Oklahoma has not yet adopted updates corresponding to Delaware's 2025 DGCL amendments, but these developments merit close attention. This is because Oklahoma has historically acted soon after Delaware's changes. For example, in 2024, Oklahoma enacted SB 620, amending Section 1006.B.7 of the OGCA to allow corporations to extend exculpatory protections to officers as well as directors, following Delaware's 2022 amendment.⁷² The amendments in SB 620 track earlier Delaware amendments to ensure continued guidance from the Delaware case law.⁷³ Likewise,

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Oklahoma's current forum-selection provisions mirror Delaware's pre-2025 framework, suggesting that similar updates could be adopted in the coming years.

Additionally, with a lawsuit concerning the retroactive application of the safe harbor clause currently pending before the Delaware Supreme Court, these developments should be closely monitored.⁷⁴ Like many other states, Oklahoma recognizes that a state legislature may not retroactively eliminate a cause of action that has already accrued or vested.⁷⁵ Given the broad influence of the DGCL across states, the outcome of this litigation could reshape corporate governance norms nationwide.

ABOUT THE AUTHOR



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ENDNOTES

1. *Salzberg, et al. v. Sciacacucchi*, 227 A.3d 102, 116 (Del. 2020) (citing Edward P. Welch and Robert S. Saunders, "Freedom and Its Limits in the Delaware General Corporation Law," 33 *Del. J. Corp. L.* 845, 856-60 (2008)).
2. S.B. 95, 2025 Leg., 1st Sess. (Del. 2025).
3. *Johnson v. Brown*, 2024 OK CIV APP 18, ¶142, 554 P.3d 781, 790 (approved for publ'n by Okla. Sup. Ct.) (Because Oklahoma corporate law is derived from Delaware law, Oklahoma adopts the construction of statutes by the highest court of that state.); see also *Woolf v. Universal Fidelity Life Ins. Co.*, 1992 OK CIV APP 129, ¶16, 849 P.2d 1093 (holding, "We agree with the trial court that the Oklahoma General Corporation Act is based upon the Delaware General Corporations Act, and should be interpreted in accordance with Delaware decisions.").
4. This article was written before the oral argument scheduled for Nov. 5, 2025.
5. *In re Match Group Inc. Derivative Litigation*, 315 A.3d 446 (Del. 2024).
6. *Id.* at 451.

7. *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).
8. *Match Group*, *supra* note 5. at 451.
9. *Id.*
10. *Id.* at 457.
11. *Id.* at 458.
12. *Id.* at 475.
13. *Id.*
14. *Id.* at 465.
15. "Delaware Revises Corporate Law to Strengthen Deals and Limit Stockholder Rights," Baker Donelson (April 21, 2025), <https://bit.ly/4d5qVXd>.
16. S.B. 21, 2025 Leg., 1st Sess. §144 (Del. 2025).
17. S.B. 21, 2025 Leg., 1st Sess. §144(a) (Del. 2025).
18. *Id.*
19. S.B. 21, 2025 Leg., 1st Sess. §144(b) (Del. 2025).
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30. *Thomas Drew Rutledge v. Clearway Energy Group LLC, et al.*, 2025-0499-LWW (Del. Ch. 2025).
31. Pamela L. Millard, *supra* note 29.
32. *Id.*
33. S.B. 95, 2025 Leg., 1st Sess. (Del. 2025).
34. *Salzberg*, *supra* note 1.
35. S.B. 95, 2025 Leg., 1st Sess. (Del. 2025).
36. *Salzberg*, *supra* note 1. at 137.
37. S.B. 95, 2025 Leg., 1st Sess. §115 (Del. 2025).
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41. S.B. 95, 2015 Leg., 1st Sess. §§102(f), 109(b) (Del. 2025).
42. *Id.*
43. 8 Del. C. §115(b).
44. S.B. 95, 2025 Leg., 1st Sess. (Del. 2025).
45. S.B. 95, 2025 Leg., 1st Sess. §103(f) (Del. 2025).
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49. See 8 Del. C.
50. S.B. 95, 2025 Leg., 1st Sess. §131(b) (Del. 2025).
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54. *Id.*
55. S.B. 95, 2025 Leg., 1st Sess. §252(c) (Del. 2025).
56. *Id.*
57. S.B. 95, 2025 Leg., 1st Sess. §311 (Del. 2025).
58. S.B. 95, 2025 Leg., 1st Sess. §311(a)(4) (Del. 2025).
59. S.B. 95, 2025 Leg., 1st Sess. §312 (Del. 2025).
60. S.B. 95, 2025 Leg., 1st Sess. §312(g) (Del. 2025).
61. *Id.*
62. *Id.*
63. S.B. 95, 2025 Leg., 1st Sess. §377 (Del. 2025).
64. S.B. 95, 2025 Leg., 1st Sess. §377(e) (Del. 2025).
65. S.B. 95, 2025 Leg., 1st Sess. §502 (Del. 2025).
66. S.B. 95, 2025 Leg., 1st Sess. §502(a) (Del. 2025).
67. *Id.*
68. S.B. 95, 2025 Leg., 1st Sess. §503 (Del. 2025).
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71. S.B. 95, 2025 Leg., 1st Sess. §505 (Del. 2025).
72. Gary W. Derrick and Jacob L. Fanning, "Recent Developments for Corporations and LLCs," *OBJ* (October 2024), <https://bit.ly/4ukoOFw>.
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75. *St. Paul Fire & Marine Ins. Co. v. Getty Oil Co.*, 782 P.2d 915, 920 (Okla. 1989) ("[T]he right of access to the courts protects only those substantive rights which have vested[.];"); see also *Rosenberg v. Town of N. Bergen*, 293 A.2d 662, 667 (N.J. 1972); *Ieropoli v. AC&S Corp.*, 842 A.2d 919, 927 (Pa. 2004); *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah. 1985).

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No Corporate AI Statute? No Problem: Advising Oklahoma Businesses Under Existing Corporate Law in the Age of AI¹

By Mikha R. Slone

OKLAHOMA BUSINESSES ARE INCREASINGLY RELYING ON ARTIFICIAL intelligence tools in their ordinary business operations. As a result, corporate lawyers must be equipped to advise clients when they inevitably ask, “There are no AI provisions in the OGCA – what do we do?” Although Oklahoma has not yet adopted AI-specific legislation under the Oklahoma General Corporation Act (OGCA), the existing statutory and jurisprudential framework governing corporations provides sufficient guidance for advising Oklahoma companies on the lawful use of AI in relation to corporate governance, contract law and fiduciary duties. This article explains how Oklahoma lawyers can utilize the existing framework to provide responsible advice to clients during the AI era.

OKLAHOMA CORPORATE LAW ALREADY REGULATES DECISION-MAKING TOOLS

Corporate boards, committees and individual officers and directors (*i.e.*, corporate fiduciaries) have long relied on trusted advisors and technology to inform their business decisions. Specifically, the OGCA provides that in performing their duties, board members are protected when, in good faith, they rely on records, information, opinions, reports or statements presented to the corporation by any person

as to matters within such person’s competence.² As a result, AI tools or vendors should never be used by corporate fiduciaries as an automated decision-maker. Instead, corporate fiduciaries should use AI only as a decision-making support mechanism and never as the sole decision-maker.

In *Egleston v. McClendon*, the Oklahoma Court of Civil Appeals emphasized the business judgment rule, which presumes that directors act on an informed basis, in good faith and in the corporation’s best interests.³ The court further

highlighted that when reviewing board decisions, the primary focus is on the board’s independence, the reasonableness of the investigation and the board’s good faith.⁴ If board members rely in good faith on records, information and reports supplied by AI vendors, they remain protected by the business judgment rule if that reliance is reasonable. It is important to advise clients that blind and unfettered reliance on AI to make decisions will likely never be reasonable. Therefore, corporate lawyers must carefully advise

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corporate fiduciaries to use AI only as a knowledge enhancement tool.

FIDUCIARY DUTIES APPLY, REGARDLESS OF TECHNOLOGY

Even in the age of AI and increasingly sophisticated technology, fiduciary duties remain the same. Corporate boards, officers and committees must always adhere to the duties of care and loyalty, an increasingly difficult task as technology evolves daily. As trusted advisors, corporate lawyers must routinely advise clients of the importance of these fiduciary duties.

“The duty of care requires that fiduciaries inform themselves of material information before making decisions and act prudently in carrying out their duties.”⁵ The duty of care closely relates to care in the decision-making process.⁶ Specifically, courts generally look at how the decision was reached, not its correctness.⁷ To avoid liability for breaches of the duty



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of care, lawyers should always advise clients to remain informed by reviewing reports, asking questions, staying informed about the board's agenda and participating in the inner workings of the corporation.⁸ In the age of AI, this advice does not change; instead, it merely evolves. Specifically, if clients wish to use AI in corporate decision-making, lawyers should strongly advise them to require human oversight of each AI tool used in order to ensure reasonable inquiry, adequate oversight and sound judgment.

The duty of loyalty requires that fiduciaries exercise good faith and that self-interest be sacrificed for the good of the corporation.⁹ If conflicts of interest arise between corporate fiduciaries and AI vendors contracted by the corporation, the duty of loyalty will govern those relationships and any potential conflicts. The OGCA provides procedural safeguards for certain conflicted transactions that would otherwise be avoidable. Specifically, it requires that 1) the material facts about the transaction and the

director's interest be known to the board or committee, and a majority of disinterested directors approve the transaction; 2) the material facts be known to the shareholders, who approve the transaction in good faith; or 3) the transaction be fair to the corporation at the time of shareholder approval.¹⁰ To avoid liability for breaches of the duty of loyalty, lawyers should advise clients to preemptively disclose any conflicts of interest with AI vendors to the corporation prior to entering any potentially conflicted transactions.

Businesses are increasingly using AI tools to support forecasting and pricing, and AI use in the finance market is predicted to nearly triple by 2028.¹¹ Accordingly, lawyers should be wary of their clients' use of AI without adequate counsel, as AI tools will never eliminate the human accountability that is central to satisfying fiduciary duties. Therefore, satisfying the duties of care and loyalty must always be at the forefront of clients' minds when relying on AI to generate business-related information.

CONTRACT LAW FILLS THE REGULATORY GAP

Oklahoma law has long governed relationships between corporations and outside vendors that provide specialized services. AI service providers are no different and fit squarely within existing contract frameworks. Specifically, contracts with AI service providers should always include provisions on data ownership, confidentiality, intellectual property rights in data outputs, indemnification and liability allocation. The absence of an AI-specific corporate statute does not affect the enforceability of negotiated risk allocation, as Oklahoma contract law already serves as the primary risk allocation mechanism for most contracts. In the absence of AI provisions in the OGCA, contracts serve as the primary means of defining the rights and responsibilities between corporations and AI vendors. Thus, corporate lawyers should take special care when reviewing and drafting AI vendor agreements to ensure clarity on AI-specific operational risks.

PRACTICAL GUIDANCE FOR OKLAHOMA PRACTITIONERS

Instead of asking whether the use of AI is permissible under existing Oklahoma corporate law, corporate lawyers should reframe the question and ask whether specific uses of AI are reasonable under existing corporate law. As best practice, corporate lawyers should advise clients to create internal AI usage policies, educate board members on the responsible use of AI tools, provide adequate board oversight and diligently review contracts that contain AI-related content. Corporate lawyers should also avoid overreliance



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on vendor standard terms and should coordinate AI contract terms with internal governance policies to prevent any breaches of fiduciary duties. Essentially, regularly counseling corporate clients on the responsible use of AI is the primary safeguard in a no-statute environment.

CONCLUSION

Oklahoma corporate law is technologically neutral and inherently adaptable. The use of AI does not create new fiduciary duties – instead, it merely changes how existing fiduciary duties are fulfilled. Thanks to Oklahoma’s preexisting corporate statutes and case law, in the absence of a corporate AI statute, corporate lawyers already have the tools to confidently advise clients on their rights and responsibilities when using AI.

Author’s Note: The information provided in this article is for general informational purposes only and does not constitute legal advice. Lawyers are reminded that ethical obligations regarding the use of AI apply equally to themselves as they do to their clients. As a best practice, lawyers must safeguard the privacy and confidentiality of client information and remain informed about relevant technological advances as standards for AI use in legal practice continue to evolve.

ABOUT THE AUTHOR



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on mergers and acquisitions, and she is licensed to practice law in Oklahoma and Louisiana.

ENDNOTES

1. This title was crafted by ChatGPT. Additionally, this article was drafted with the assistance of ChatGPT for initial structuring and brainstorming.

2. “A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of his duties, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation’s officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such officer’s, employee’s, committee’s, or other person’s competence and who have been selected with reasonable care by or on behalf of the corporation.” Oklahoma Statutes, Title 36, Section 2608.1(D).

3. “When applying the business judgment rule, courts presume that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company and its shareholders. Whenever any action or inaction by a board of directors is subject to review according to the traditional business judgment rule, the issues before the court are independence, the reasonableness of its investigation and good faith, and when a board refuses a demand, the only issues to be examined are the good faith and reasonableness of its investigation.” *Egleston v. McClendon*, 2014 OK Civ. App. 11.

4. “Whenever any action or inaction by a board of directors is subject to review according to the traditional business judgment rule, the issues before the Court are independence, the reasonableness of its investigation and good faith.” *Id.*, citing *Kurtz v. Clark*, 2012 OK Civ. App. 103.

5. *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034 (Del. 2021) (citing *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984)).

6. Irving L. Faught, *Oklahoma Business and Commercial Law*, §7.12 (Matthew Bender and Co., 2025).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Studies “[p]redict that AI in the finance market will nearly triple by 2028. By automating repetitive tasks, AI financial forecasting improves accuracy, accelerates decision-making, and frees finance teams from manual tasks – positioning CFOs as strategic leaders in a volatile business environment.” “A New Era of Financial Forecasting: AI is Replacing Static Budgets,” *The Finance Weekly*.

Can the Economic Loss Doctrine Be Your Economic Gain Doctrine?

How the Potential Expansion of the Doctrine Can Protect Your Business

By Wilson D. McGarry and Evan G. Vincent

IN APRIL 2025, TWO OKLAHOMA COURT CASES quietly clarified the legal landscape to potentially better protect businesses and corporations from tort liability when the damages in a dispute are strictly economic in nature and arise from a contractual relationship. This article explores the implications of the economic loss doctrine, as discussed in the Oklahoma Supreme Court case *Mills v. J-M Mfg. Co.*¹ and the Oklahoma Court of Civil Appeals case *Proe v. Diamond Homes*,² and whether those cases set the stage for broader application of the doctrine, which, in Oklahoma, has traditionally been limited to manufacturer's products liability cases.

To the extent the economic loss doctrine is ripe for expansion, this article examines how that might impact Oklahoma businesses, contractual risk allocation and the scope and application of the doctrine. A historical review of the doctrine is significant to highlight the principles underpinning the doctrine and the rationale for its potential expansion in Oklahoma.

HISTORICAL ORIGINS OF THE ECONOMIC LOSS DOCTRINE IN OKLAHOMA

The economic loss doctrine "is a court-created doctrine that bars recovery under manufacturer's product liability for purely economic injury to the product itself."³ In Oklahoma, the doctrine traces its roots to *Waggoner v. Town & Country Mobile Homes, Inc.*⁴ There, the plaintiffs (consumers) sued a mobile home manufacturer under theories of products liability after their mobile home

experienced excessive condensation buildup.⁵ The plaintiffs asserted claims of design defect and breach of warranties. The plaintiffs' damages were the mobile home's deterioration from the excessive condensation, which was essentially the cost of the mobile home. The plaintiffs did not assert a claim for personal injury or other property damage; their damages were strictly economic in nature. As an issue of first impression, the Oklahoma Supreme Court addressed the

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question of “whether manufacturers’ products liability applies to purely economic damages.”⁶ The issue boiled down to an analysis of the relationship between products liability (tort, in nature) and the Uniform Commercial Code (UCC) (contract, in nature). The *Waggoner* court noted that liability under a products liability theory is primarily tortious in nature, “independent of UCC warranty provisions because recovery under manufacturers’ products liability arises from a duty to the public rather than from a contractual relationship.”⁷ In contrast, the court stated that recovery under the UCC arises out of the contractual relationship between a buyer and a seller of goods, including recovery

of a buyer’s economic losses (in *Waggoner*, like other commercial disputes, the contract established the basis for the application of the UCC and recovery of economic losses).⁸

The *Waggoner* court explained that tort law, as compared to the UCC and contract law, has not traditionally protected the economic expectations of parties.⁹ This gave reason for the court to conclude that “economic damages are more logically related to the UCC than to manufacturer’s products liability.”¹⁰ This observation that the UCC and, by extension, contract law provided a sufficient avenue for recovery of economic losses positioned the *Waggoner* court to find “no need to extend manufacturers’ liability into

an area already occupied by the UCC.”¹¹ The *Waggoner* court proclaimed, “To extend manufacturers’ products liability to include purely economic losses would undermine the UCC’s comprehensive and finely tuned statutory mechanism for dealing with the rights of parties to a sales transaction with respect to economic losses.”¹² Ultimately, the *Waggoner* court held, “In Oklahoma no action lies in manufacturers’ products liability for injury only to the product itself resulting in purely economic loss.”¹³

The holding in *Waggoner* followed the rationale used by the United States Supreme Court four years earlier in *East River Steamship Corp. v. Transamerica Delava Inc.*¹⁴ In an opinion delivered by Justice

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Blackmun, *East River* is widely credited as the first U.S. Supreme Court decision to adopt and apply the economic loss doctrine. In adopting the position that purely economic losses are not recoverable in products liability, the U.S. Supreme Court reasoned that “protection of the buyers’ expectations as to product value ‘is precisely the purpose of express and implied warranties.’”¹⁵

Only two years after *Waggoner*, the Oklahoma Supreme Court revisited the application of the economic loss doctrine in *Oklahoma Gas & Elec. Co. v. McGraw-Edison Co.*¹⁶ Significantly, the Oklahoma Supreme Court more clearly characterized manufacturers’ products liability cases, absent personal injury or property damage, as actions sounding in contract rather than tort. The court held that a plaintiff in a manufacturer’s products liability action cannot recover damages for injury to the allegedly defective product itself *and* consequential economic harm flowing from that injury.¹⁷ This rationale was then reaffirmed in *Dutsch v. Sea Ray Boats, Inc.*,¹⁸ when the Oklahoma Supreme Court had the chance to recognize one of the exceptions to

the economic loss doctrine – where personal injury is involved in the products defect claim.

The holdings and rationale of the Oklahoma Supreme Court in these cases draw upon one of the bedrock principles underlying the doctrine: maintaining a clear distinction between tort and contract law when a contract remedy suffices and there has been no personal injury or damage to property.¹⁹

THE CURRENT STATE OF THE ECONOMIC LOSS DOCTRINE IN OKLAHOMA AND ITS POTENTIAL EXPANSION

Recent Oklahoma case law more clearly defined the boundary between tort and contract and, in doing so, arguably opened the door for further application of the economic loss doctrine. First, in *Mills v. J-M Mfg. Co.*,²⁰ the Oklahoma Supreme Court undoubtedly recognized the second exception to the economic loss doctrine – where there is damage to property other than the product itself.²¹ This exception is often referred to as the “other property” exception.

After recognizing this exception to the doctrine, the *Mills* court took a step further, analyzing whether

the doctrine barred an indemnity claim brought by a third party that owned the “other property” that was damaged.²² *Mills* involved a products defect claim brought by property owners whose property was damaged after a saltwater pipe sold by Rainmaker, manufactured by JM Eagle and installed by Charter Oak failed under pressure.²³ After Charter Oak settled with the property owners, Charter Oak sought indemnity from Rainmaker and JM Eagle.²⁴ Importantly, the indemnity claim was based on the legal relationship of the parties, not a contractual indemnity relationship.²⁵ While reaffirming that the doctrine “bars recovery under manufacturer’s products liability for purely economic injury to the product itself,” the *Mills* court held that the doctrine did not bar the indemnity claim.²⁶ Specifically, the *Mills* court held, “The economic loss rule does not bar a claim for indemnity where a party satisfies a legal obligation to compensate for damage to third-party property caused by a defective product.”²⁷ In rendering its decision, the *Mills* court highlighted the primary purpose of the doctrine: “to preserve the boundary between tort and contract by precluding recovery for purely economic losses where contract remedies exist.”²⁸ Additionally, the *Mills* court reasoned that applying the doctrine to bar the indemnity claim would have been inequitable by punishing Charter Oak for fulfilling its nondelegable duty to the property owners despite having no connection to the cause of the product’s failure.²⁹

In a footnote, the *Mills* court noted that other jurisdictions had extended the economic loss doctrine beyond products liability.

Recent Oklahoma case law more clearly defined the boundary between tort and contract and, in doing so, arguably opened the door for further application of the economic loss doctrine.

The court declined to extend the doctrine at this time but potentially left open the door by stating that the court has not “adopted such an expansive approach, and the facts of *this* case do not warrant doing so.”³⁰ By declining to expand the doctrine based on the specific facts presented in *Mills*, the Oklahoma Supreme Court may be receptive to further development of the economic loss doctrine if the facts warrant such consideration.

Perhaps providing an additional steppingstone for further application of the economic loss doctrine, the Oklahoma Court of Civil Appeals published its opinion in *Proe v. Diamond Homes*³¹ only three weeks after *Mills*. *Proe* involved a residential construction dispute between the homeowners, the builder and a contract employee of the builder.³² The homeowners sued the builder and a contract employee for breach of contract and negligence in the construction of their home, alleging that the defendants failed to construct their home in a workmanlike manner free from defects and were responsible for the design and preparation of the concrete slab at issue in the case.³³ In affirming the district court’s decision barring the plaintiffs’ negligence claims, the *Proe* court relied on the Oklahoma Supreme Court’s reasoning in *Rodgers v. Tecumseh Bank*,³⁴ a case far from the products liability realm.

Rodgers involved a dispute between a bank and borrowers on a loan to purchase real estate.³⁵ The question presented was whether the Oklahoma Supreme Court should “extend the implied-in-law duty of good faith and fair dealing, [...] imposed upon contracts of insurance, to contracts for commercial loans in order to support a

cause of action for tortious breach of contract.”³⁶ In declining to do so, the *Rodgers* court emphasized that the borrower’s tort claim arose solely from contract, and, as such, without some independent basis to support their tort claim, it was simply one sounding in contract.³⁷ While not expressly stating it, the decision in *Rodgers* reaffirmed the same bedrock principle underlying the economic loss doctrine, which is that tort and contract doctrines, including the liability flowing therefrom, should remain separate. The court in *Rodgers* reaffirmed the principle that if a contract remedy will suffice, then a tort claim is simply proof of the breach of contract, and the separate tort claim should be barred, absent some independent basis for the tort claim.

The *Proe* court followed the *Rodgers* rationale in finding that the negligence claim against the contract employee failed because the contract employee’s status as an agent protected him from tort liability.³⁸ The employee had a contractual relationship with the homebuilder, not the homeowners. Under those circumstances, Oklahoma law provides that an “agent’s breach of duty owed to the principal is not an independent basis for the agent’s tort liability to a third party.”³⁹ Rather, the duty owed is grounded in the contractual relationship between the parties. At first blush (and ultimately), the well-established privity of contract requirement appeared to bar the negligence claim between the homeowners and the contract employee. Judge Barnes wrote a concurrence that affirmed dismissal based on lack of privity. The majority, however, affirmed for a separate reason. The majority explained that to avoid

the privity requirement, the homeowners’ tort claim against the contract employee would have to be based on conduct independent of that covered by the employee’s contractual duty.⁴⁰ The majority emphasized that Oklahoma law recognizes the difference between a contractual duty and a tort duty, and when the duty alleged to have been breached arises solely from contract, then the alleged negligent conduct is nothing more than proof of the breach of contract.⁴¹

Applying this same rationale, the majority held that the homeowners’ tort claim was barred against the homebuilder by the principles supporting the economic loss doctrine. In analyzing the interplay between the negligence claim and contract claim against the homebuilder, the majority elaborated on the reasoning underlying the basis for separating tort and contract doctrines and liability. The majority noted that prior Oklahoma Supreme Court cases authorizing simultaneous tort and contract claims involved injuries beyond the particular matter of contract.⁴² The majority, accordingly, articulated the clarifying statement that “if there is no damage to person or property ... beyond the particular matter of the contract, there is no tort.”⁴³ The tort claim against the contract employee failed because there was no damage to person or property.

Perhaps seeing the opening provided by *Mills*, the majority in *Proe* observed, “Courts applying the economic loss rule outside the products liability context have found its products liability origin equally sound in breach of contract cases.”⁴⁴ The majority noted that, at its core, the economic loss doctrine “serves to maintain a

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distinction between contract and tort law.⁴⁵ By adopting and applying the doctrine in *Proe*, the majority connected the dots: “Oklahoma has not adopted the economic loss rule, by name, outside the manufacturer’s products liability context Nonetheless, that legal principle is consistent with Oklahoma law on the damages available for breach of contract in the absence of personal injury or damage to other property.”⁴⁶ Even Judge Barnes’ concurring opinion that affirmed based on privity principles recognized the doctrine for what it could be, pronouncing the economic loss doctrine to be “a legal doctrine that bars recovery in tort actions where a contractual relationship between the parties exist and the losses claimed are purely economic losses.”⁴⁷

Proe should not be viewed as an outlier decision as it is consistent with *Mills* and prior precedent. The majority’s opinion in *Proe* clarified the boundary between contract and tort law – when a contractual relationship governs a dispute in which there is not personal injury or damage to other property, a party cannot simply assert an alternative negligence claim as an end-around for the longstanding privity of contract requirement. The holding does not appear to extend the meaning of the economic loss doctrine under Oklahoma law but rather recognizes that it may be a tool or basis to reaffirm these longstanding bedrock principles of contract and tort law.

While neither *Mills* nor *Proe* expanded the economic loss doctrine, they may have opened the door for applying the doctrine beyond the manufacturers’ products liability context in the future. *Mills* began by examining

an exception to the doctrine in the construction defects context, noting other jurisdictions that have extended the doctrine, but explaining that the case-specific facts did not warrant expansion. *Proe* recognized that the economic loss doctrine could be applicable in certain circumstances to reaffirm longstanding principles separating contract and tort law, such as privity of contract. Furthermore, *Proe* analyzed the doctrine’s underlying rationale in the construction context and tied that reasoning to Oklahoma Supreme Court precedent outside of the manufacturer’s products liability realm. Is this equation sufficient to result in further application of the doctrine? Often, when courts develop judicial doctrines, they look to other jurisdictions for guidance.

LESSONS FROM THE APPLICATION OF THE ECONOMIC LOSS DOCTRINE IN OTHER JURISDICTIONS

The majority of courts in other jurisdictions have already taken the next step in applying the economic loss doctrine to cases outside of the manufacturers’ products liability context. In its broadest sense, the doctrine could be asserted in any dispute that is governed by a contract. For instance, courts have widely extended the doctrine to cases involving construction defects and professional services.

At least 10 other jurisdictions have held that the doctrine bars tort claims involving design professionals and engineers, absent personal injury or damage to property.⁴⁸

Two cases – *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*⁴⁹ and *Terracon Consultants W., Inc. v. Mandalay*

*Resort Grp.*⁵⁰ – among others, serve as anchoring guides in applying the economic loss doctrine to negligence claims levied against design professionals and engineers, typically in a construction defect setting. Both cases also present additional legal rationales worth considering when one is involved in a dispute wherein the economic loss doctrine could apply.

Terracon Consultants W., Inc. v. Mandalay Resort Grp. serves as a modern example of a state supreme court extending the economic loss doctrine logic beyond product manufacturers and into construction/professional services. Furthermore, by refusing to permit negligence claims against design professionals in commercial projects, *Terracon* emphasized protecting parties’ bargain-based risk allocation via contract and limited unforeseeable tort exposure for businesses, which fosters economic predictability.

Balfour addressed the applicability of the economic loss doctrine to claims of negligent misrepresentation brought by a contractor against a design engineering firm that produced construction design plans for the city of Baltimore. At the outset, *Balfour* explained that there is typically tension between a contractor and an engineer in the design-bid-build model.⁵¹ Generally, the contractor and engineer each have separate contracts with the owner but no contractual relationship with each other.⁵² When delays in the construction project occur, the contractor may blame the engineer for a flawed design (for example, claiming negligent misrepresentation based on faulty information in the design documents) despite the lack of a contractual relationship with

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the engineer. On the other hand, the engineer has an interest in defending their design and denying any change order or request for modified plans submitted by the contractor. Because of the lack of a contractual relationship, the contractor may be inclined to assert tort claims against the engineer. However, permitting tort liability against a design professional in the absence of a contractual relationship, personal injury or property damage may cause the design professional's typically neutral position to shift to a position in which it considers tort liability in executing its design plans.⁵³ This is similar to the idea of a doctor practicing defensive medicine. Further, exposing the engineer to tort liability for purely economic damages would prevent parties from negotiating and defining their economic risks via contract. Consequently, applying the doctrine could protect the design engineer's neutrality and prevent a chilling effect that could

occur if tort liability extended to the design engineer.⁵⁴

On appeal, the *Balfour* court examined whether to extend a duty in tort to persons not in privity for the recovery of purely economic losses. There, the court held, "The economic loss doctrine represents a judicial refusal to extend tort liability to negligence that causes purely economic harm in the absence of privity, physical injury, or risk of physical injury."⁵⁵ This holding aligns with Oklahoma's recognition and requirement of privity of contract to bring a cognizable claim in the construction defect context.⁵⁶

While the economic loss doctrine has been applied in other jurisdictions to construction defect and design professional cases, other jurisdictions have imposed limits and exceptions to the doctrine. For example, in 2023, the Tennessee Supreme Court held that the doctrine applies only in products liability cases and does not extend to service contracts.⁵⁷

This is all to say that despite the simplicity of the underlying principles, historical precedence and expansion in other districts, we do not yet know whether the doctrine will be extended beyond manufacturers' products liability by the Oklahoma Supreme Court. In the meantime, it is imperative for practitioners and businesses to pay attention to the evolving case law and prepare accordingly.

TURN YOUR ECONOMIC LOSS INTO ECONOMIC GAIN AND AVOID LITIGATION HEADACHES

With the stage set by *Mills* and *Proe*, businesses and corporations should arm themselves with the doctrine any time a contract dispute arises with purely economic damages at issue. This is particularly important in disputes involving commercial transactions, especially when statutory provisions, like those found in the UCC, may apply. As it currently stands, Oklahoma district courts are being presented with, examining and adjudicating arguments involving the economic loss doctrine in construction defect cases. In practice, contract language and terms, along with warranty disclaimers and limitations of liability clauses, should receive close attention in drafting and particularly when litigation is initiated. Indeed, Oklahoma law provides that contracts may exclude claims for "indirect or consequential damages" and may limit tort liability as long as the contract language is clear and unambiguous as to the parties' intent to restrict tort liability.⁵⁸ Businesses and their lawyers should work to allocate their risks to explicit contractual terms – including "no tort liability" clauses.



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Ultimately, Oklahoma courts have provided a sound and principled basis for the expansion of the doctrine into construction matters and commercial transactions, as well as other areas.

On the other hand, those seeking claims that can be tied to a contract should anticipate the economic loss doctrine being raised as a defense. It appears that Oklahoma courts, through *Mills* and *Proe*, have brought to focus that which may have been blurry by recognizing that the doctrine can serve as a basis to reaffirm the principle that it is improper to bring a negligence claim plea as an alternative to a breach of contract claim as an end-around in a dispute where contract terms govern and privity applies. Additionally, anticipating further application of the doctrine may serve as a point of future litigation efficiency. Being aware that the doctrine could apply in certain circumstances should cause parties to change their behavior. Understanding the boundary for viable claims could save litigants both time and expense. Addressing these issues early, when parties are negotiating and drafting contractual terms, could avoid costly litigation.

Ultimately, Oklahoma courts have provided a sound and principled basis for the expansion of the doctrine into construction matters and commercial transactions,

as well as other areas. In-house counsel and legal practitioners alike should closely monitor the evolution and application of the doctrine, while businesses and corporations should, likewise, prepare for a potential expansion of the economic loss doctrine and how they might protect themselves with it.

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ENDNOTES

1. 2025 OK 23, 567 P.3d 385.
2. 2025 OK CIV APP 18, 574 P.3d 1.
3. *Mills v. J-M Mfg. Co.*, 2025 OK 23, ¶15, 567 P.3d 385, 389.
4. *Waggoner v. Town & Country Mobile Homes, Inc.*, 1990 OK 139, 808 P.2d 649.
5. *Id.* at ¶¶3-12.
6. *Id.* at ¶14.
7. *Id.* at ¶15.
8. *Id.* at ¶19.
9. *Id.* at ¶20.
10. *Id.*
11. *Id.* at ¶21.
12. *Id.* at ¶21 (internal quotations omitted).
13. *Id.* at ¶22.
14. *East River Steamship Corp. v. Transamerica Delava, Inc.*, 476 U.S. 858 (1986).
15. *Waggoner*, 1990 OK 139, ¶22 (citing *East River*, 476 U.S. at 872).
16. *Oklahoma Gas & Elec. Co. v. McGraw-Edison Co.*, 1992 OK 108, 834 P.2d 980.
17. *Id.* at ¶¶1-6 (emphasis added).
18. 1992 OK 155, 845 P.2d 187.
19. *Dutsch v. Sea Ray Boats, Inc.*, 1992 OK 155, 845 P.2d 187.
20. 2025 OK 23, 567 P.3d 385.
21. *Mills v. J-M Mfg. Co.*, 2025 OK 23, ¶18, 567 P.3d 385.
22. *Id.* at ¶19.
23. *Id.* at ¶¶2-3.
24. *Id.*
25. *Id.* at ¶¶8-13.
26. *Id.* at ¶¶15 and 21.
27. *Id.*
28. *Id.* at ¶20.
29. *Id.*
30. *Id.* at fn. 5. In declining to extend the economic loss doctrine, it should not be overlooked that the *Mills* court cited other jurisdictions that have extended the doctrine beyond the context of products liability, yet the court explained that it had not adopted “such an expansive approach.”
31. 2025 OK CIV APP 18, 574 P.3d 1.
32. *Proe v. Diamond Homes*, 2025 OK CIV APP 18, ¶¶1-2, 574 P.3d 1.
33. *Id.* at ¶¶4-5.
34. 1988 OK 36, ¶18, 756 P.2d 1223.
35. *Rodgers v. Tecumseh Bank*, 1988 OK 36, ¶18, 756 P.2d 1223.
36. *Id.* at ¶1.
37. *Id.* at ¶18 (“The duty alleged in the borrowers’ alternative theory of recovery for tortious breach arises solely from contract. Without independent basis to support a tortious wrongdoing, there is nothing more than an alleged breach of that contract.”).

38. *Proe*, 574 P.3d 1 at ¶20.
 39. *Id.*
 40. *Id.* at ¶24.
 41. *Id.* at ¶25.
 42. *Proe*, at ¶37.
 43. *Id.* (internal quotations omitted).
 44. *Id.* at ¶38.
 45. *Id.* (citing *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256, 1262 (Colo. 2000)).
 46. *Proe*, 574 P.3d 1 at ¶42.
 47. *Proe*, 574 P.3d 1 at ¶13 (Barnes, C.J., concurring opinion).
 48. See e.g., *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 630, 155 A.3d 445, 462-63 (2017) (“We apply the economic loss doctrine and decline to impose tort liability on Engineer for purely economic injuries alleged by Contractor that was neither in privity nor suffered physical injury or risk of physical injury.”); *Berschauer/Phillips Const. Co. v. Seattle Sch. Dist. No. 1*, 124 Wash. 2d 816, 881 P.2d 986, 990 (1994) (“[T]he economic loss rule does not allow a general contractor to recover purely economic damages in tort from a design professional.”); *Rissler & McMurry Co. v. Sheridan Area Water Supply Joint Powers Bd.*, 929 P.2d 1228, 1235 (Wyo. 1996) (economic loss doctrine barred Restatement (Second) of Torts §552 claim by contractor against engineer); *LAN/STV v. Martin K. Eby Const. Co.*, 435 S.W.3d 234, 249-50 (Tex. 2014) (economic loss doctrine bars negligence and negligent misrepresentation claims by general contractors against architects for delay damages); *BRW, Inc. v. Dufficy & Sons, Inc.*,

99 P.3d 66, 74, 75 (Colo. 2004) (economic loss doctrine barred subcontractor’s negligence and negligent misrepresentation claims against engineering firm and inspector); *Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 740 (Ind. 2010) (economic loss doctrine precluded negligence claims by an owner against parties connected to it through “a network or chain of contracts”); *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66, 206 P.3d 81, 89 (2009) (“In the context of engineers and architects, the bar created by the economic loss doctrine applies to commercial activity for which contract law is better suited to resolve professional negligence claims.”); *Fleischer v. Hellmuth, Obata & Kassabaum, Inc.*, 870 S.W.2d 832, 834 (Mo. Ct. App. 1993) (“[A]n architect owes no tort duty of care and is not liable to a general contractor or construction manager for damages for economic losses arising as a result of the architect’s negligent performance of its contract with the owner.”); *Kalahari Development, LLC v. Iconica, Inc.*, 811 N.W.2d 825, 832-33 (Wis. Ct. App. 2012); *Flagstaff Affordable Hous. Ltd. P’ship v. Design All., Inc.*, 223 Ariz. 320, 329, 223 P.3d 664, 673 (2010) (“the policy concerns that justify applying the [economic loss] doctrine to construction defect cases do not justify distinguishing between contractors on the one hand and design professionals, including architects, on the other.”); *Travelers Indem. Co. v. Dammann & Co.*, 594 F.3d 238, 248 (3d Cir. 2010) (stating, “Contract law is better suited to resolve disputes between parties

where a plaintiff alleges direct and consequential losses that were within the contemplation of sophisticated business entities with equal bargaining power and that could have been the subject of their negotiations”); *SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc.*, 28 P.3d 669, 683-684 (Utah 2001).
 49. 226 Md. App. 420, 130 A.3d 1024 (2016), *aff’d*, 451 Md. 600, 155 A.3d 445 (2017).
 50. 125 Nev. 66, 206 P.3d 81, 89 (2009).
 51. *Balfour*, 226 Md. App. at 429 (“Some contractors believe they can increase profits through change orders that are based on ambiguities, errors, or omissions in the [engineer]’s design. [Engineers] have an interest in protecting their designs, and frequently serve as the owner’s representative during construction.”).
 52. *Id.*
 53. *Id.* at 453.
 54. See *Balfour*, 226 Md. App. at 452 (discussing the potential chilling effect caused by permitting the extension of tort liability to the design engineer).
 55. *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 611, 155 A.3d 445, 451 (2017).
 56. See *Proe v. Homes*, — P.3d —, ¶126, 2025 OK CIV APP 18.
 57. *Com. Painting Co. Inc. v. Weitz Co. LLC*, 676 S.W.3d 527 (Tenn. 2023).
 58. *Abercrombie & Fitch Stores, Inc. v. Penn Square Mall Ltd. P’ship*, 2018 OK CIV APP 56, ¶13, 425 P.3d 757.



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The Whimper (Almost) No One Heard Coming: *Berk v. Choy* and Anti-SLAPP Statutes

By Mbilike M. Mwafulirwa

“THIS IS THE WAY THE world ends, not with a bang but a whimper.” – T.S. Eliot¹

When Harold Berk fell out of bed during a trip to Delaware and ended up with a severely deformed ankle after an alleged botched hospital visit,² he probably did not imagine that his malpractice lawsuit would become a vehicle for the U.S. Supreme Court to reiterate one of its most consequential principles about the nature of federal civil procedure. In *Berk v. Choy*,³ the Supreme Court held that Delaware’s “affidavit of merit” requirement for medical malpractice lawsuits is inapplicable in federal court.⁴ Justice Amy Coney Barrett’s opinion is a study in unassuming simplicity; it is the kind of judicial writing that seems almost obvious in retrospect, until one realizes how much it likely, quietly, forecloses.⁵ But such is the irony and drama inherent in life. Again, on a seemingly unassuming day, a man fell out of his bed somewhere in Delaware,⁶ but the butterfly effect⁷ of that fall, this article contends, will likely reverberate

in diversity jurisdiction cases in federal courts across America for years to come.

Berk’s facts are straightforward. Mr. Berk sued Dr. Wilson Choy and Beebe Medical Center for negligence.⁸ Under Delaware law, such a suit cannot proceed unless accompanied by an affidavit from a medical professional attesting to its merit. Mr. Berk, despite a good-faith effort, could not produce one in time.⁹ The question on *certiorari* review was whether this Delaware gatekeeping mechanism could operate in federal court, where Mr. Berk had filed his negligence lawsuit based on diversity of citizenship original jurisdiction.¹⁰

The Supreme Court said no. The affidavit of merit requirement was inapplicable in federal court.¹¹ More importantly, the court explained *why* in a manner that likely has (as most Supreme Court cases often do) significant implications extending well beyond certificates of merit – implications that should give pause to anyone who has assumed that state anti-SLAPP¹² statutes occupy some special exemption from the ordinary rules governing federal procedure.

THE BERK V. CHOY FRAMEWORK

Berk applied a familiar framework. State law claims in state court usually implicate state law.¹³ But when the parties are from different states, the amount at issue exceeds \$75,000, and the case is pending in federal court, those courts must apply state substantive law and federal procedural law.¹⁴ To that end, “when a Federal Rule of Civil Procedure is on point,” the court explained, “a federal court bypasses *Erie’s* inquiry altogether.”¹⁵ This is because, the court said, “the Rules Enabling Act, which authorizes the Supreme Court to adopt uniform procedural rules for federal district courts, provides for the application of federal law.”¹⁶ A valid federal rule, therefore, “displaces contrary state law even if the state law would qualify as substantive under *Erie’s* test.”¹⁷ The analysis proceeds in two steps. *First*: Does a Federal Rule of Civil Procedure “answer[] the question in dispute”?¹⁸ If so, *second*: the federal rule “governs,” unless it “exceeds statutory authorization or Congress’s rulemaking power.”¹⁹

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A federal rule is valid if it “really regulates procedure,” and if it does, “the substantive nature of [a state] law or its substantive nature *makes no difference.*”²⁰ The court said it has never invalidated a Federal Rule of Civil Procedure, and it made clear in *Berk* that it was not about to break that streak.²¹

What *Berk* emphasized is that when asking whether a federal rule answers the disputed question, a federal court must take the rule’s “plain meaning” as controlling.²² To begin with, Federal Rule of Civil Procedure 8 requires “a short and plain statement of the claim showing that [the pleader] is entitled to relief.”²³ Rule 12, in turn, provides the only merit-based ground for dismissal – based on a “failure to state a claim upon which relief can be granted” – and it prohibits courts from considering “matters outside the pleadings” when evaluating the question of dismissal.²⁴

By contrast, Delaware’s affidavit requirement, the court held, “gives different answers to the question” of what a plaintiff must provide at the pleading stage in order to keep their case alive.²⁵

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While Rule 8 requires only a statement of the claim, Delaware’s law demands evidence at the pleading stage – “a prima facie evidentiary requirement,” as the Delaware courts describe it.²⁶ Thus, *Berk* found that the conflict was direct and real.²⁷

What makes *Berk* so significant is what the court said about the nature of this conflict and the impossibility of accommodation. The defendants tried a workaround: They proposed to the Supreme Court rewriting Delaware’s law to function not as “a pleading requirement” but as a “free-floating evidentiary requirement” that could justify early dismissal.²⁸ But the Supreme Court’s response was a firm no. Even if one accepted such “creative license” with state law, the court reasoned that “there would be no way to enforce such a requirement” under the Federal Rules of Civil Procedure.²⁹ The defendants conceded that the absence of an affidavit is not grounds for dismissal under Rule 12(b)(6). What’s more, Federal Rule of Civil Procedure 56 already prescribes the “mechanism for putting a

plaintiff to his proof: a motion for summary judgment.”³⁰

Here is the crucial point for the reader: The court said the Federal Rules of Civil Procedure already occupy the field.³¹ Those rules already answered the question of *how* and *when* a plaintiff can be put to their proof. Rule 8 defines pleading sufficiency. Rule 12 defines motions to dismiss, which are allegations-based dismissal mechanisms. Rule 56, in turn, defines summary judgment, which is an evidence-based dismissal motion.³² Thus, a state law that purports to impose a different standard – whether styled as a pleading requirement, an evidentiary threshold or a gatekeeping mechanism – necessarily conflicts with this comprehensive federal procedural scheme.³³

The Supreme Court invoked *Burlington Northern R. Co. v. Woods*³⁴ for the proposition that a federal rule can displace state law when it “occupies the statute’s field of operation.”³⁵ This language of field occupation is important. Under longstanding federal preemption

principles, once federal law occupies a field, even complementary state legislation is impermissible.³⁶ The reasoning in the Supreme Court’s preemption cases is this: if a given federal scheme represents a considered judgment about how the relevant regulatory framework should operate, and state variations – even well-intentioned ones – introduce dissonance into this uniform system.³⁷

THE FIELD IS OCCUPIED: HOW *BERK* COULD DISPLACE ANTI-SLAPPS

This, then, brings us to state anti-SLAPP statutes and to what *Berk* quietly (and likely) telegraphed about their fate in diversity jurisdiction cases. This is likely true for three reasons. *First*, the Supreme Court has long held that its reasoning in its opinions – the *ratio decidendi* – applies beyond the immediate facts of the case at hand. It is that reason-for-the-rule that is binding in other cases.³⁸ *Second*, nearly every federal court of appeals, following Justice Antonin Scalia’s lead, holds that the mode of analysis announced in Supreme Court opinions is binding.³⁹ *Third*, some circuits, especially the 10th Circuit, hold that they are bound by Supreme Court dicta just as much as the holding itself.⁴⁰ Thus, altogether, whichever way one dices *Berk* – whether applying its *ratio decidendi*, its mode of analysis or what some would consider its dicta – in the 10th Circuit (and its attendant lower courts) at least, the case applies beyond the affidavit of merit.

Enter anti-SLAPP statutes. Anti-SLAPP laws – statutes designed to protect defendants from “strategic lawsuits against public participation” – have proliferated across the states.⁴¹

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Anti-SLAPP laws typically allow a defendant to bring an early dismissal motion when a plaintiff's lawsuit targets conduct arising from the defendant's exercise of free speech rights.⁴² Most would likely say, so far, so good – who would object to protecting First Amendment activity from retaliatory litigation? The problem, almost always, is in the details, specifically *how* state anti-SLAPP laws operated.

Most anti-SLAPP statutes share four common elements. *First*, anti-SLAPP statutes impose an evidentiary burden at the pleading stage: A plaintiff must establish a likelihood of success on the merits by demonstrating a *prima facie* case with admissible evidence.⁴³ *Second*, anti-SLAPP statutes alter the standard of review: Rather than taking the plaintiff's factual allegations as true, courts applying anti-SLAPP statutes must do away with that presumption and instead hold a plaintiff to their *prima facie* case burden.⁴⁴ *Third*, most anti-SLAPP statutes, including Oklahoma's, provide for early dismissal based on this evidentiary showing (or lack thereof) before any discovery has occurred.⁴⁵ *Fourth*, anti-SLAPP statutes typically give a movant an immediate right to appeal a denial of a dismissal motion contrary to established practice in federal court for most allegations or evidence-based dismissal motions.⁴⁶

When applicable, anti-SLAPP laws fast-track dismissal motions and impose procedural burdens on civil litigants. Oklahoma's anti-SLAPP statute, the Oklahoma Citizens Participation Act (OCPA), is a "broad" statute aimed "at protecting a wide spectrum of First Amendment speech, with limited exceptions."⁴⁷ The trigger

for the statute is a lawsuit that "*is based on, relates to, or is in response to ... [a moving party's] exercise of the right of free speech, the right to petition, or the right of association.*"⁴⁸ This requirement, Oklahoma courts have said, extends the "reach of the OCPA" to "*any tort involving speech.*"⁴⁹ Important still, the speech or communication at issue should relate to a matter of public concern.⁵⁰ The OCPA defines a matter of public concern to include, among other things, any matter related to "economic or community well-being" or "health and safety."⁵¹ When the OCPA is applicable, the initial burden is on the party seeking dismissal to show that the lawsuit is based on or relates to First Amendment rights.⁵² Once the movant clears their First Amendment rights threshold, the burden then shifts to the nonmovant to show "by clear and specific evidence a *prima facie* case for each essential element of the claim in question."⁵³ If a *prima facie* case is shown, then the burden shifts to the movant to establish a defense – but not one based on disputed facts.⁵⁴

APPLYING BERK: ANTI-SLAPPS AND THE FEDERAL RULES' POSSIBLE CONFLICT

After *Berk*, the conflict between these anti-SLAPP law features and the federal rules will likely strike many as unavoidable. Indeed, this will likely be true with rules 8, 12, 26 and 56. After *Berk*, as this article tries to show later, the continued application of anti-SLAPPs in federal court is debatable.

Start with Federal Rule of Civil Procedure 8. *Berk* held that Rule 8 sets "*a ceiling on the information that plaintiffs can be required to provide about the merits of their claims*" at the outset of litigation.⁵⁵

Delaware's affidavit requirement violated this ceiling by demanding more: demanding evidence, not just a statement of the claim, at the pleading stage.⁵⁶ Anti-SLAPP statutes appear to do the same thing. As noted, anti-SLAPPs require a plaintiff to produce evidence – to make out a *prima facie* case – at a stage when the federal rules demand only a short and plain statement.⁵⁷ Indeed, the defendants in *Berk* tried to distinguish the affidavit requirement by arguing that it was a "precondition to proceeding" rather than a pleading requirement. But the Supreme Court rejected this gambit. "Describing the affidavit requirement as a precondition to proceeding does not magically dispel the conflict."⁵⁸ To be sure, anti-SLAPP statutes likely face the same problem. Whether one styles the requirement as a "special motion to dismiss" or a "precondition to proceeding," just as the defendant in *Berk*, the substance is the same: The plaintiff must do more than plead. They must bring evidence at the pleading stage, and in *Berk's* words, that would appear to straightforwardly conflict with Rule 8.⁵⁹

Consider Rule 12 next. *Berk* emphasized that Rule 12(b)(6) provides the "only ground for dismissal based on the merits" at the pleading stage in federal court and that Rule 12(d) prohibits courts from considering "matters outside the pleadings" when evaluating a motion to dismiss.⁶⁰ Thus, under this framework, a federal court need only ask whether the complaint's factual allegations, taken as true, "state a claim to relief that is plausible on its face."⁶¹ But anti-SLAPP statutes would seem to upend this scheme entirely. They require courts to consider

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matters outside the pleadings – affidavits, declarations and evidence of probability of success.⁶² Anti-SLAPP laws do not take the plaintiff’s allegations as true; they focus on the evidence and whether it meets the *prima facie* threshold.⁶³ Indeed, anti-SLAPP statutes permit dismissal not because the plaintiff has failed to state a claim but because the plaintiff has failed to marshal sufficient evidence to establish their *prima facie* case. Justice Ketanji Jackson’s concurrence made this point with force: A state law that requires judges to “account for a matter outside the pleadings ... when deciding whether to dismiss” a case directly conflicts with Rule 12(d).⁶⁴

Berk likely also makes a conflict between anti-SLAPP statutes and Rule 26 unavoidable. By their design and operation, anti-SLAPP statutes impose a discovery moratorium as soon as the dismissal motion is filed.⁶⁵ That means, unless a district court, in its discretion, finds good cause to permit discovery, the target of an anti-SLAPP statute’s evidence-based motion must make do without a guarantee of discovery.⁶⁶ The Federal Rules of Civil Procedure, by contrast, provide for discovery when a nonmovant faces the prospect of an evidence-based dismissal motion.⁶⁷ Thus, the two laws function differently. That explains why long before *Berk*, nearly every federal court of appeals that applied anti-SLAPP statutes permitted discovery.⁶⁸ What the lower federal appellate courts had telegraphed, *Berk*’s reasoning now likely confirms.

Finally, consider Rule 56. *Berk* made clear that the Federal Rules of Civil Procedure already prescribe “the mechanism for putting

a plaintiff to his proof: a motion for summary judgment.”⁶⁹ Before ruling on such a motion, “the court must allow the nonmovant adequate time for discovery.”⁷⁰ Important still, during a Rule 56 evidence-based dismissal motion, a federal court must consider the facts in the light most favorable to the nonmovant.⁷¹ By contrast, anti-SLAPPs, including Oklahoma’s, have no similar presumption; everything depends on whether the nonmovant has established a *prima facie* case.⁷² Moreover, and as noted, anti-SLAPP statutes differ from Fed. R. Civ. P. 56 because they require the plaintiff to make an evidentiary showing before discovery – indeed, anti-SLAPP statutes typically stay discovery pending resolution of the anti-SLAPP motion. By contrast, Rule 56 has a strong preference for discovery for evidence-based dispositive motions.⁷³ In fact, this (preference for discovery during evidence-based motions) is a policy choice that the federal rules have already made, which *Berk* holds must be respected in diversity jurisdiction cases to avoid injecting dissonance in federal court practice.⁷⁴

But some federal courts have insisted on applying anti-SLAPP

statutes in diversity jurisdiction cases, reasoning that such statutes are “substantive” because they create a right to avoid the burdens of litigation.⁷⁵ After *Berk*, it is questionable whether this analysis still holds true. *Berk*, after all, applied a robust conflict analysis: The question is no longer whether a state law (in this case, an anti-SLAPP statute) has substantive purposes or effects. The court emphasized that as long as a federal rule is “on point,” and it “really regulate[s] procedure,” in the manner of disposing claims, then “the substantive nature of [a state] law, or its substantive purpose, makes no difference” to the overall conflict analysis.⁷⁶ The question is whether a federal rule answers the same question that the state law addresses. If it does, and if that rule is valid (which it almost inevitably always is), then the state law is displaced.⁷⁷

To recap the analysis so far, anti-SLAPP statutes likely answer differently the same questions as rules 8, 12, 26 and 56. They appear to address what a plaintiff must show at the pleading stage (Rule 8 says: a short and plain statement; anti-SLAPPs say: a *prima facie*

Berk holds that when the Federal Rules of Civil Procedure answer a procedural question, they answer it for everyone who walks through the federal courthouse doors.⁹⁰

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case). Anti-SLAPP statutes address on what grounds a complaint (or petition) may be dismissed before an answer (Rule 12 says: failure to state a claim, with allegations taken as true; anti-SLAPPs say: failure to establish a *prima facie* case with evidence). The anti-SLAPP statutes also address when a plaintiff can be put to their proof (Rule 56 says: after adequate opportunity for discovery, with facts viewed in the light most favorable to the nonmovant; anti-SLAPPs say: before discovery, under a stay, with no presumption to view the facts in the light most favorable to the nonmovant). The likelihood of a conflict between the two laws appears high.

POLICY CONCERNS LIKELY DO NOT DISPLACE AN ON-POINT FEDERAL PROCEDURAL RULE

Berk adhered to its holding notwithstanding compelling policy objections. The court acknowledged that Delaware's affidavit requirement served genuine policy goals – screening frivolous malpractice suits, reducing the cost of malpractice insurance and protecting the health care system.⁷⁸ But even then, the Supreme Court still held that such policy considerations are irrelevant to the analysis. “The substantive purpose” of the state law, the court said, “makes no difference.”⁷⁹ What matters, said the Supreme Court, is whether a valid and on-point Federal Rule of Civil Procedure governs the manner and means of enforcing rights.⁸⁰ In a similar vein, courts have long recognized that state anti-SLAPP statutes serve important First Amendment values.⁸¹ Those statutes, courts have held, protect speakers from

being chilled by the threat of meritless litigation.⁸² But *Berk* now likely forecloses this argument. If a Federal Rule of Civil Procedure is “on point,” and its main purpose is to facilitate the orderly processing of a claim pending in federal court, then it is a valid procedural rule.⁸³ That means, and *Berk* appears to make this clear, such a procedural federal rule should control, notwithstanding a complementary state analogue, whether it was designated as a substantive or procedural rule.⁸⁴

That is not to say that the plaintiff in federal court is free to pursue baseless and abusive litigation. As Judge Bobby Baldock of the 10th Circuit has warned those litigants who might wish to exploit this perceived enforcement gap: By their design and operation, the Federal Rules of Civil Procedure are primed for dealing with frivolous litigation.⁸⁵ Rule 11 permits sanctions for baseless filings.⁸⁶ Rule 12(b)(6) permits dismissal of implausible alleged claims.⁸⁷ Rule 56 permits summary judgment when the plaintiff cannot make out their case after discovery.⁸⁸

THE WHIMPER (ALMOST) NO ONE HEARD COMING

Harold Berk's case was not about free speech. It was about an alleged broken ankle, a botched fitting and a missing affidavit.⁸⁹ Yet the principle the Supreme Court announced in *Berk* in resolving Mr. Berk's dispute likely reaches far beyond medical malpractice affidavits of merit. *Berk* holds that when the Federal Rules of Civil Procedure answer a procedural question, they answer it for everyone who walks through the federal courthouse doors.⁹⁰ Because of *Berk*, for anti-SLAPP statutes in federal

court, this may be how the world ends – not with a bang but with a whimper that (almost) no one heard coming.

ABOUT THE AUTHOR



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ENDNOTES

1. T.S. Eliot, *The Hollow Men* (1925).
2. See *Berk v. Choy*, 607 U.S. ___, 146 S.Ct. 546, 551 (2026).
3. *Id.*
4. *Id.*
5. See generally *id.*
6. *Id.*
7. “The butterfly effect describes the compounding effect of a minor errors, which can amplify one another over time and eventually cause major damage.” *Escobedo v. Ace Gathering, Inc.*, 2024 WL 5443121, at *3 n. 3 (5th Cir. Sept. 30, 2024) (Oldham, J., dissenting from denial of rehearing en banc).
8. See *Berk*, 146 S.Ct. at 551.
9. *Id.* at 551-52.
10. *Id.* at 551.
11. *Id.*
12. The acronym “SLAPP” stands for “strategic lawsuits against participation.” See Mbilike M. Mwafulirwa, “Suing on Shifting Sands: The Oklahoma Constitution, Retroactive Legislation and the Scramble for Clarity,” 88 *OBJ.* 935 (May 20, 2017) (citations omitted).
13. See *Berk*, 146 S.Ct. at 552 (“State-law claims are usually brought in state court.”).
14. *Id.*
15. *Id.* *Erie* refers to *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). “In diversity cases, the *Erie* doctrine instructs that federal courts must apply state substantive law and federal procedural law.” *Racher v. Westlake Nursing Home Ltd. P’ship*, 871 F.3d 1152, 1162 (10th Cir. 2017) (applying Oklahoma law).
16. *Berk*, 146 S.Ct. at 552 (citing 28 U.S.C. §2072(a)).
17. *Id.* (emphasis added).
18. *Id.*
19. *Id.*

20. *Id.* at 556 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)).

21. *Id.*

22. See *Berk*, 146 S.Ct. at 552.

23. *Id.*; see also Fed. R. Civ. P. 8 (a)(2).

24. See *Berk*, 146 S.Ct. at 553; Fed. R. Civ. P. 12(b)(6) and (d).

25. See *Berk*, 146 S.Ct. at 553.

26. *Id.*

27. *Id.*

28. *Id.* at 555.

29. *Id.*

30. *Id.*

31. *Id.* at 552; see also *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 774, 775 (2019) (Plurality Op.) (listing “civil procedure” in federal court as an example of the court applying its “modern field preemption doctrine”); accord *id.* at 781 (Ginsburg, Kagan and Sotomayor, JJ., concurring) (agreeing with lead opinion on that issue).

32. See *Berk*, 146 S.Ct. at 554-55.

33. See *id.*

34. 480 U.S. 1, 7-8 (1987).

35. See *Berk*, 146 S.Ct. at 553.

36. *E.g.*, *Arizona v. United States*, 567 U.S. 387, 399, 401 (2012) (holding that when a federal occupies a field, “even complementary state regulation is impermissible”) (emphasis added).

37. See *Hanna v. Plumer*, 380 U.S. 460, 472-73 (1965) (Congress enacted the Federal Rules of Civil Procedure to promote an important federal interest of ensuring uniformity of proceedings in federal court); *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 5-7 (state law had to yield because it disrupted the mode of operation of a controlling federal rule).

38. *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020) (Plurality Op.) (It is, after all, the “ratio decidendi – that allows ... [a judicial opinion] to have life and effect in the disposition of future cases.”) (emphasis added); *Bucklew v. Precythe*, 587 U.S. 119, 136 (2019) (the ratio – “the reasoning underlying” the holding – is “just as binding as [the] holding.”) (emphasis added); see also *In re Est. of Bleeker*, 2007 OK 68, ¶14, n. 25, 168 P.3d 774, 781 (“The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion.”) (emphasis added).

39. See *Stokes v. Sw. Airlines*, 887 F.3d 199, 204 (5th Cir. 2018); see also Antonin Scalia, “The Rule of Law as a Law of Rules,” 56 *U. Chi. L. Rev.* 1175, 1177 (1989) (lower courts are bound by a higher appellate court’s mode of analysis); accord *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 645 (9th Cir. 2025); *United States v. Brooks*, 751 F.3d 1204, 1209 (10th Cir. 2014) (circuit precedent is not binding “when the Supreme Court issues an intervening decision that is contrary to or invalidates our previous analysis.”) (cleaned up).

40. See, e.g., *Dine Citizens Against Ruining Our Env’t v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016) (“[W]e have said that this court considers itself bound by Supreme Court dicta almost as firmly as by the Court’s outright holdings, particularly when the dicta is recent and not enfeebled by later statements.”) (emphasis added).

41. *Anagnost v. Tomacek*, 2017 OK 7, ¶8, 390 P.3d 707, 710; *Krimbill v. Talarico*, 2018 OK CIV APP 37, ¶5, 417 P.3d 1240, 1244-45.

42. See *Krimbill*, 2018 OK CIV APP 37, ¶14, 439 P.3d at 1246.

43. *Id.* ¶11, 439 P.3d at 434-35; see also 12 O.S. §1434 (c).

44. See 12 O.S. §1434 (c) compare with Fed. R. Civ. P. 12 (b)(6) and (c); cf. *Anderson v. Wilken*, 2016 OK CIV APP 35, ¶4, 377 P.3d 149, 151 (in an anti-SLAPP motion, “none of these standards” – *i.e.*, taking facts alleged as true – “apply”).

45. See 12 O.S. §1432(C); *id.* §1435 (B).

46. See 12 O.S. §1437 (right to immediate appeal) contrast with *Anderson*, 2016 OK CIV APP 35, ¶6, 377 P.3d at 151 (a denial of a motion to dismiss is not appealable); *Van Cauwenberghe v. Biard*, 486 U.S. 517, 529 (1988) (order denying motion to dismiss is not appealable).

47. *Krimbill v. Talarico*, 2018 OK CIV APP 37, ¶8, 417 P.3d 1240, 1245.

48. *Id.* (quoting 12 O.S. §1434(B)) (emphasis added).

49. *Id.* ¶128, 417 P.3d at 1248 (emphasis added) (cleaned up).

50. 12 O.S. §§1431(3), 1432.

51. *Id.* §§1431(7)(a-b) (emphasis added).

52. *Krimbill*, 2018 OK CIV APP 37, ¶8, 417 P.3d at 1245 (Oklahoma’s statute is “directed at protecting a wide spectrum of First Amendment speech, with limited exceptions.”); accord *Lewis v. Corrente*, 2020 OK CIV APP 45, ¶18, 473 P.3d 531, 535.

53. *Krimbill*, 2018 OK CIV APP 37, ¶8, 417 P.3d at 1245; 12 O.S. §1434(c).

54. *S.W. Orthopaedic Spec. P.L.L.C. v. Allison*, 2018 OK CIV APP 69, ¶13, 439 P.3d 430, 434 (A “dismissal based on a defense may be obtained only if the defense is one of law, not one requiring the court to [d]ecide disputed facts.”) (cleaned up).

55. *Berk*, 146 S.Ct. at 553-54.

56. *Id.* at 554.

57. See 12 O.S. §1434(c) compare with Fed. R. Civ. P. 12 (b)(6) and (c); cf. *Anderson*, 2016 OK CIV APP 35, ¶4, 377 P.3d at 151 (in an anti-SLAPP motion, “none of these standards” – *i.e.*, taking facts alleged as true – “apply”).

58. *Berk*, 2026 WL 135974, at *5 (cleaned up).

59. *Id.*; Fed. R. Civ. P. 12 (b)(6) and (c); contrast with 12 O.S. §1434(c).

60. *Berk*, 146 S.Ct. at 553.

61. *Id.*

62. See 12 O.S. §1434 (B); *id.* §1435 (A).

63. See 12 O.S. §1434(c) compare with Fed. R. Civ. P. 12 (b)(6) and (c); cf. *Anderson*, 2016 OK CIV APP 35, ¶4, 377 P.3d at 151 (in an OCPA motion, “none of these standards” – *i.e.*, taking facts alleged as true – “apply”).

64. *Berk*, 146 S.Ct. at 563 (K. Jackson, J., concurring).

65. *E.g.*, 12 O.S. §1432 (C) (discovery automatically stayed after anti-SLAPP motion is filed).

66. *Id.* §1435 (B).

67. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986); *Bryant v. O’Connor*, 848 F.2d 1064, 1068 (10th Cir. 1988).

68. *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 845 (9th Cir. 2012).

69. *Berk*, 146 S.Ct. at 555.

70. *Id.*; see also Fed. R. Civ. P. 12(d) (requiring a “reasonable opportunity to present all the [pertinent] material” if a motion to dismiss is converted to motion for summary judgment).

71. *Scott v. Harris*, 550 U.S. 372, 378 (2007) (Federal “courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing the [summary judgment] motion.”) (cleaned up).

72. See 12 O.S. §1434(c) compare with Fed. R. Civ. P. 12 (b)(6) and (c); cf. *Anderson*, 2016 OK

CIV APP 35, ¶4, 377 P.3d at 151 (in an anti-SLAPP motion, “none of these standards” – *i.e.*, taking facts alleged as true – “apply”).

73. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

74. See *Berk*, 146 S.Ct. at 555.

75. *E.g.*, *Godin v. Schencks*, 629 F.3d 79, 89-90 (1st Cir. 2010) (Maine anti-SLAPP statute); *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) (“California has articulated the important, substantive state interests furthered by the Anti-SLAPP statute.”).

76. See *Berk*, 146 S.Ct. at 557.

77. *Id.*

78. *Id.* at 551.

79. *Id.* at 557.

80. *Id.* at 556-57.

81. *Krimbill*, 2018 OK CIV APP 37, ¶8, 417 P.3d at 1245; *Lewis*, 2020 OK CIV APP 45, ¶18, 473 P.3d at 535.

82. See *Krimbill*, 2018 OK CIV APP 37, ¶8, 417 P.3d at 1245.

83. See *Berk*, 146 S.Ct. at 552, 556-57.

84. *Id.* at 557.

85. *Id.*; see also Fed. R. Civ. P. 11.

86. See Fed. R. Civ. P. 11.

87. See *Berk*, 146 S.Ct. at 553-54.

88. See *Berk*, 146 S.Ct. at 555; see also Fed. R. Civ. P. 56.

89. See *Berk*, 146 S.Ct. at 551.

90. See *Berk*, 146 S.Ct. at 552, 556-57.

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The Academy of Classical Christian Studies Wins State Mock Trial Championship

TWO TEAMS REPRESENTING the Academy of Classical Christian Studies in Oklahoma City earned the honor of competing in this year's Oklahoma High School Mock Trial Championship. The teams met for the final round of competition on March 3 in Tulsa at the Page Belcher Federal Building and U.S. Court for the Northern District of Oklahoma. The high school's "Team Goodness," in its role as plaintiff, defeated "Team



Long-time Mock Trial Coordinator Judy Spencer, who retired in 2025, was honored by the OBA Mock Trial Committee with the inaugural "Judy Spencer Award" during the finals competition in Tulsa.

Beauty," in the role of defendant, in the fictional case of "Tony Shapiro v. Blackstone Insurance Company." Team Goodness will now advance to represent Oklahoma at the National High School Mock Trial Tournament in Des Moines, Iowa, in May.

Through the Oklahoma High School Mock Trial program, which is funded by a grant from the Oklahoma Bar Foundation, high school students assume the roles of attorneys and witnesses as they build and argue cases before volunteer judges. Thirty-eight teams from across the state competed this year. Competition season began last fall.

"The High School Mock Trial program, now in its 45th year, is a unique activity that sharpens thinking, listening and speaking skills," said Mock Trial Coordinator Mike Horn. "Students must analyze the materials from all perspectives and learn to build persuasive arguments. They develop critical thinking and reasoning skills that will serve them throughout their lives. Many former mock trial competitors go on to become lawyers and judges, and several participate now as volunteers."

The final round was presented to a distinguished panel of judges. The presiding judge was Judge Jane Wiseman of the Oklahoma Court of Civil Appeals.

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The Academy of Classical Christian Studies Team Goodness was named the 2026 Oklahoma High School Mock Trial state champion and will represent Oklahoma at the National High School Mock Trial Championship in May.



Judge and attorney volunteers gather at the Page Belcher Federal Building and U.S. Court for the Northern District of Oklahoma to host the 2026 Oklahoma High School Mock Trial championship round of competition.

Scoring panelists were Judge Dan Crawford, Judge Deirdre Dexter, Judge Stacie Hixon, Judge Mark Schwebke and Judge Georgenia Van Tuyl.

Both teams were coached by April Spencer, with Jennifer Stall serving as attorney coach. Ethan Hoyle and Tyler Smothers served as the teams' assistant coaches.

THANK YOU TO OUR VOLUNTEERS

Along with the generous support from the Oklahoma Bar Foundation, hundreds of judges and attorneys volunteer to make each year's program a success. These volunteers donate time to work with mock trial teams directly, score and judge the teams throughout the competition and serve as members of the OBA Mock Trial Committee to plan and execute the competition. Email mocktrial@okbar.org if you are interested in being a part of the committee or volunteering for the Oklahoma High School Mock Trial program next year!

Bar Members Celebrate Membership Anniversaries

THE OKLAHOMA BAR Association congratulates these members who reached significant milestone anniversaries in 2026.



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In 1956, Elvis Presley recorded "Heartbreak Hotel," the United States adopted "In God We Trust" as its national motto, the New York Yankees' Don Larsen pitched the only World Series perfect game, and President Dwight D. Eisenhower signed the Federal-Aid Highway Act, paving the way for the American interstate system.



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TULSA COUNTY

William Carl Anderson, *Tulsa*
Gerald Hugh Barnes, *Tulsa*
Robert Byers Case, *Tulsa*
Harold H. Cooper Jr., *Tulsa*
Ed R. Crockett, *Tulsa*
Frederic Griffin Dorwart, *Tulsa*
Frederick L. Dunn III, *Tulsa*
Kenneth Charles Ellison, *Tulsa*
John A. Gaberino Jr., *Tulsa*
P. Jay Hodges, *Tulsa*
Gary M. Jarmon, *Tulsa*
Samuel Joyner III, *Tulsa*
James Hardy Payne, *Tulsa*
Samuel Clifford Stone, *Tulsa*
John Hampton Tucker, *Tulsa*
William Womack VanDall, *Tulsa*
Henry German Will, *Tulsa*

WASHINGTON COUNTY

Jerald M. Maddux, *Bartlesville*

WOODS COUNTY

William A. Hadwiger, *Alva*

OUT OF STATE

John C. Brannan Jr., *Dallas, TX*
James Richard Clark, *Glen Allen, VA*
Joe Bruce Cox, *Naples, FL*
Floy E. Dawson, *Oakland, CA*
John Clarke Fredenberger,
Paris, France
Ernest F. Godlove, *Santa Fe, NM*
Alan Hanson, *Pratt, KS*
Robert Herzog, *Boynton Beach, FL*
Noel Blake Le Crone, *Waco, TX*
Bobby E. Potts, *Horseshoe Bay, TX*
David Lee Reynolds, *Milford, CT*
Arthur Donald Rhoads,
Walnut Creek, CA

Archie Lew Robbins, *Keller, TX*
Ralph Joseph Salerno, *Bloomfield, NJ*
Richard B. Standefer, *Midland, TX*
Leigh Taylor, *Vancouver, BC*



In 1966, Miranda rights were established following the U.S. Supreme Court decision in *Miranda v. Arizona*, the Ford Motor Co. produced its one millionth Mustang, *Star Trek* premiered on NBC, Kwanzaa was celebrated for the first time, and Martin Luther King Jr. announced the Chicago Freedom Movement, which contributed to the passage of the Fair Housing Act of 1968.



BRYAN COUNTY

Rocky Lyn Powers, *Durant*

CADDO COUNTY

Richard Allan Williams, *Anadarko*
Thomas Robert Zynda, *Anadarko*

CANADIAN COUNTY

Gary Dean Long, *Mustang*

CARTER COUNTY

Robert M. Highsmith, *Ardmore*
Polly Murphy, *Ardmore*

CHEROKEE COUNTY

Joe Hack Witherspoon, *Tahlequah*

CLEVELAND COUNTY

Bruce Gordon Allen, *Norman*
Robert Lindsay Bailey, *Norman*
Bradley Dean Brickell, *Norman*
Alan R. Brinkley, *Norman*
Susan E. Bryant, *Norman*
Cheryl Ann Clayton, *Noble*
Paul Stephen Cotner, *Norman*
Philip Wayne Durrill, *Oklahoma City*
Linda Kay Ellis, *Norman*
Jerral Wayne Foshee, *Oklahoma City*
John C. Gatlin, *Norman*
David Thomas Hopper, *Norman*
James Henry Lockhart, *Norman*
William Kurt Morgan, *Oklahoma City*
Michael Thomas Oakley, *Norman*
Catherine H. Petersen, *Norman*
Fred Douglas Shirley, *Norman*
Robert Lane White, *Oklahoma City*

COMANCHE COUNTY

Raymond Keith Jennings, *Lawton*
Kade A. McClure, *Lawton*
Richard Wayne Tannery, *Lawton*

COTTON COUNTY

Kathleen Flanagan, *Walters*

CREEK COUNTY

April Sellers White, *Sapulpa*

CUSTER COUNTY

James Martin Tisdal, *Clinton*

DELAWARE COUNTY

Mary Elizabeth Von Drehle,
Bernice

DEWEY COUNTY

Ricky Max Bozarth, *Seiling*

GARFIELD COUNTY

David Charles Butler, *Enid*

GARVIN COUNTY

Candace G. Blalock, *Pauls Valley*
Martha Moody Hardwick,
Pauls Valley
Thomas Hale Hart, *Lindsay*

KINGFISHER COUNTY

Robert E. Davis, *Okarche*

KIOWA COUNTY

Norman L. Russell, *Hobart*
Thomas Welborne Talley, *Hobart*

LINCOLN COUNTY

Robert Patrick Gilmore, *Chandler*
Larry Keith Lenora, *Chandler*

LOGAN COUNTY

Larry Roger Brooks, *Guthrie*
Robert H. Burnham, *Edmond*
Steven Ray Lorange, *Crescent*
Thomas L. Reams, *Crescent*

MAYES COUNTY

John Michael Crockett, *Pryor*

MCINTOSH COUNTY

Michael A. Kirkpatrick, *Eufaula*

MURRAY COUNTY

Timothy K. Colbert, *Sulphur*

OKLAHOMA COUNTY

Jo Angela Ables, *Oklahoma City*
James William Allison,
Oklahoma City
Howard Quenton Bain, *Midwest City*
John Baxter Ballard II, *Oklahoma City*
Dwight Wayne Birdwell,
Oklahoma City
L. Robert Bracken, *Edmond*
George M. Bradley, *Oklahoma City*
Joseph A. Buckles II, *Oklahoma City*

Roberta J. Lester Chubbuck,
The Village

Sherilyn L. Clark, *Edmond*
Brent Douglas Coldiron, *Edmond*
John Byron Combs, *Edmond*
John Christopher Condren,
Oklahoma City

James Barry Dixon, *Edmond*
Roderick W. Durrell, *Edmond*
Clarence Kent Eldridge,
Oklahoma City

Randall Elliott, *Edmond*
Gordon Dale Elsener, *Edmond*
Donna Embry, *Oklahoma City*
Jack D. Fisher, *Edmond*
Jack P. Fite, *Oklahoma City*

Kirk David Fredrickson,
Oklahoma City
Gerald Patrick Green, *Oklahoma City*
Benjamin Frank Hackett, *Edmond*
Mark Edgar Hammons,
Oklahoma City

John Barnes Heatly, *Oklahoma City*
Joseph Lynn Heaton, *Edmond*
Michael Sam Homsey,
Oklahoma City

Howard F. Israel, *Edmond*
Michael E. Joseph, *Oklahoma City*
Maria Lewis Jowaisas,
Oklahoma City

Mary Ann Karns, *Oklahoma City*
James Mark Kaufman,
Oklahoma City
Eric Raymond King, *Oklahoma City*
Thomas J. Kirby, *Edmond*

Timothy Deal Kline, *Oklahoma City*
Jude Ralph Krejci, *Wheatland*
Wallace Wm Kunzman Jr.,
Oklahoma City

Timothy Jon Lamiell, *Oklahoma City*
Kenneth Eugene Lisle Jr., *Edmond*
John Joseph Love, *Oklahoma City*
John A. McCaleb, *Oklahoma City*
John Jay Morozuk, *Oklahoma City*

Marcus Glen Mullins,
Oklahoma City
Kenneth Lee Peacher II,
Oklahoma City

John Anderson Petree,
Oklahoma City
James B. Pitts III, *Oklahoma City*
Mary Kathleen Rhodes,
Oklahoma City

Thomas Joseph Roach Jr.,
Oklahoma City

Mary Arline Robison, *Oklahoma City*
Barry G. Stafford, *Edmond*
Charles David Stinson,
Oklahoma City

Eleanor Joyce Darden Thompson,
Oklahoma City
Curtis Wm Threlkeld, *Oklahoma City*
Raymond L. Vaughn Jr., *Edmond*
Geary Lynn Walke, *Edmond*

Nicholas A. Wavers, *Oklahoma City*
Mort Goodwin Welch, *Nichols Hills*
Thomas Clopton Williams,
Nichols Hills

Lee Anne Wilson, *Oklahoma City*
Mary Anne Winn-McGee,
Oklahoma City
Richard Duane Wymer, *Nichols Hills*

OSAGE COUNTY

Rene Paul Henry Jr., *Hominy*
Leon Wayne Woodyard, *Pawhuska*
Jesse J. Worten III, *Pawhuska*

PAWNEE COUNTY

Lawrence A. Martin II, *Cleveland*
Kenneth Bryce Privett, *Pawnee*

PAYNE COUNTY

Eugenia Tremaine Baumann,
Stillwater
Stephen Glen Coit, *Stillwater*
Vance H. Fried, *Stillwater*

PITTSBURG COUNTY

William Harbert Layden Jr.,
McAlester

PONTOTAC COUNTY

Thomas S. Landrith, *Ada*

POTTAWATOMIE COUNTY

Justice Douglas Lee Combs,
Shawnee
J. Roger Henson, *Shawnee*

ROGERS COUNTY

David L. Ashbaugh, *Claremore*

SEMINOLE COUNTY

George W. Butner, *Seminole*
Richard E. Butner, *Wewoka*

STEPHENS COUNTY

Joseph H. Enos, *Duncan*

TEXAS COUNTY

James M. Boring, *Guymon*

TILLMAN COUNTY

David Barnett, *Frederick*

John Patrick Kent, *Frederick*

TULSA COUNTY

Bradford Sidney Baker, *Sperry*

Robert D. Baker, *Sand Springs*

Daniel J. Boudreau, *Tulsa*

Steven Gus Cousparis, *Broken Arrow*

John Stephen Denney, *Tulsa*

Terry Richard Doverspike, *Tulsa*

Gordon W. Edwards, *Jenks*

Philip John Eller, *Tulsa*

Joseph R. Farris, *Tulsa*

Robert S. Farris, *Tulsa*

Benjamin C. Faulkner, *Sand Springs*

Mac Douglas Finlayson, *Tulsa*

Mark Hugh Finnerty, *Tulsa*

John F. Fischer II, *Tulsa*

Martin Alan Frey, *Tulsa*

Karen Miller Funk, *Tulsa*

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Tim Johnson, *Jenks*

C. Bruce Jones, *Tulsa*

Thomas Donald Kivell, *Tulsa*

Scott Thomas Knowles, *Tulsa*

Julie Elaine Lamprich, *Tulsa*

Neal F. Lehman, *Tulsa*

Lee Ira Levinson, *Tulsa*

Steven R. Mackey, *Tulsa*

Scott W. McEachin, *Tulsa*

Alfred K. Morlan, *Tulsa*

Thomas William Murphy Jr., *Tulsa*

Paul David Newsome Jr., *Tulsa*

Thomas George Noulles, *Tulsa*

David Edward O'Meilia, *Jenks*

Laurence L. Pinkerton, *Tulsa*

Kent E. Renfrow, *Tulsa*

C. Clay Roberts III, *Tulsa*

G. Samuel Schaunaman II, *Tulsa*

Stephen Arthur Schuller, *Tulsa*

Victor R. Seagle, *Tulsa*

George Daniel Shahadi, *Tulsa*

Donald Eugene Smolen, *Tulsa*

Jerry Michael Snider, *Tulsa*

Kenneth Palmer Snoke, *Tulsa*

Jeffrey Conner Steen, *Broken Arrow*

Robert Howard Taylor, *Tulsa*

Mark Oliver Thurston, *Tulsa*

Ken Ray Underwood, *Tulsa*

Keith Allen Ward, *Tulsa*

Otis W. Williams Jr., *Tulsa*

Jerry L. Witt, *Tulsa*

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Michael Leland Addicott,

Hallandale, FL

Andrew C. Aldridge,

Merstham, Surrey, UK

Loren L. Baker, *Fallbrook, CA*

Robert Louis Battoglia,

Alexandria, VA

John I. Moritzky Choate,

St. George, UT

Jon Bernard Comstock, *Rogers, AR*

Eddie Correia, *Bethesda, MD*

Phillip Ray Davis, *Trinity, FL*

Donald L. Detrich, *Trophy Club, TX*

James Alexander Drummond,

Georgetown, TX

George Louis de Verges, *Dallas, TX*

Margaret E. Doty, *Silver Spring, MD*

Lucia Allen Dougherty,

Coral Gables, FL

William Michael Drisko,

Lexington, KY

Clifford L. Elliott Jr., *Jemez Pueblo, NM*

Donna Embry, *Bethesda, MD*

Leola Ann Foster, *Topeka, KS*

James Francis Gillet, *Fair Grove, MO*

Billy Jack Hendrix, *Tallahassee, FL*

Donald Lee Hoeft, *Saint Paul, MN*

Patricia Ann Johnson, *Houston, TX*

Gary Dale Kennedy, *Hurst, TX*

Jill M. Kennedy, *Phoenix, AZ*

William H. Luker, *Land O' Lakes, FL*

Jean McDonald, *Sedona, AZ*

Thomas Keith Mirabile, *Wheaton, IL*

Jack Lynn Kinzie, *Dallas, TX*

Ronald Paul LeFever, *Brookfield, WI*

Alice Schaffer Mitchell,

McDonough, GA

Cleta Deatherage Mitchell,

Pinehurst, NC

Patrick Eugene Moore, *Santa Fe, NM*

Mark John Morrow, *Wichita, KS*

Jeffrey Van Myers, *Driftwood, TX*

Russell Orban, *Falls Church, VA*
William F. Pain, *Greenwood Village, CO*

Carl Willard Parkhurst,
Corpus Christi, TX

Gerald H. Riffe, *Grandview, MO*

Teddy Lee Ritter, *Saint Paul, MN*

Richard Diamond Roberts,
Denver, CO

Raymond B. Roush, *Doral, FL*

Curtis Lyle Smith, *Wheat Ridge, CO*
Harold D. Stratton Jr.,

Albuquerque, NM

Dennis Lee Toedter, *Coeur d'Alene, ID*

Ralph Eugene Walker, *Lewisville, TX*

Irving Darris Warden Jr.,

Herndon, VA

Mandy Jo Welch, *Leggett, TX*

Robert Keith Whitt, *Midland, TX*

Gary Carl Wilkerson, *Memphis, TN*



In 1976, the Congressional Hispanic Caucus was established. Steve Wozniak and Steve Jobs founded Apple Computer Inc. and released the Apple I computer. Romanian Nadia Comăneci was the first gymnast in Olympic history to receive a perfect score, and the U.S. Department of the Treasury reintroduced the \$2 bill on Thomas Jefferson's 233rd birthday as part of the United States bicentennial celebration.

More Than a Meeting

Why the 2026 Midyear Conference Matters

By Janet Johnson

IN THE LEGAL PROFESSION, the pace rarely slows. Court dockets remain full, clients' needs continue to evolve, and the demands on lawyers' time seem to increase each year. Amid that busy landscape, it can sometimes be difficult to justify stepping away from the office for a conference. Yet one of the strongest takeaways from recent bar leadership discussions around the country is that gathering together, with intention and in person, remains one of the most valuable investments lawyers can make in their profession.

That is precisely why the upcoming OBA Midyear Conference, set for June 17-19 at the OKANA Resort and Indoor Waterpark in Oklahoma City, is so important. It is more than a meeting. It is an opportunity to reconnect with the broader legal community, engage with emerging issues in the profession, and help shape the direction of the bar.

LEARNING BEYOND THE CLE REQUIREMENT

Continuing legal education is a necessary part of maintaining professional competence, but the best conferences provide something that cannot be captured in a CLE credit alone. They offer context, conversation, and perspective.

At the Midyear Conference, lawyers will hear directly from



leaders in the profession about emerging trends, challenges, and innovative solutions being developed. Those conversations often spark new ideas that lawyers can bring back to their own practices and communities.

Equally important, the discussions that take place in hallways, over coffee, or during networking events often prove just as valuable as the formal programming. Conferences provide space for lawyers to share experiences, discuss practical challenges, and learn from one another in ways that rarely happen during the daily rush of practice.

STRENGTHENING PROFESSIONAL CONNECTIONS

The practice of law can be both demanding and isolating. Many lawyers spend long hours focused on client matters, often without the opportunity to engage regularly with colleagues outside their own firms or practice areas.

The Midyear Conference will provide a chance to strengthen those professional connections. It brings together attorneys from across the state, solo and small firm practitioners, government lawyers, in-house counsel, and legal educators. That diversity of perspective enriches the conversation and helps build a stronger, more connected legal community.

These relationships often extend far beyond the conference itself. A conversation started during a breakout session may lead to a future referral, a collaborative project or simply a trusted colleague to call when a difficult issue arises. In a profession built on trust and reputation, those connections matter.

ENGAGING IN THE WORK OF THE BAR

Another important benefit of attending the Midyear Conference is the opportunity to see firsthand how the work of the bar unfolds. Bar associations rely heavily on volunteer leadership. Conferences like Midyear offer a natural entry point for lawyers interested in becoming more involved. Observing the work of committees and sections can help attorneys identify areas where their own interests and expertise may align with ongoing initiatives.

For many bar leaders, their first step into broader service began with simply attending a conference and discovering the many ways lawyers can contribute beyond their daily practice.

RECHARGING PROFESSIONAL PURPOSE

Ultimately, this event will provide something that is often overlooked but deeply important: the chance to reconnect with the purpose of

the profession. The practice of law is demanding, and the day-to-day pressures of client work can sometimes overshadow the larger mission.

Gathering with colleagues who share that commitment can be both energizing and inspiring. Hearing from others who are working to improve the legal system reminds us why we chose this profession in the first place.

The 2026 OBA Midyear Conference offers exactly that opportunity – a moment to step back, learn from one another, and return to our practices with renewed perspective. In a profession built on relationships, service, and shared responsibility for the justice system, showing up matters. The newly coined Midyear Conference is one of the best places to do exactly that, and registration is now open! We hope you will join us – view conference details and register now at www.okbar.org/midyear.



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

Learning, Leadership and the Future of Practice

What To Expect at the OBA Midyear Conference

By Julie Bays

THE OBA MIDYEAR Conference is set to take place at the OKANA Resort in Oklahoma City, welcoming attorneys from all corners of the state for three days. The conference will be filled with engaging educational sessions, meaningful discussions and opportunities to strengthen professional relationships. Attendees will have

the chance to connect with colleagues, share experiences and build networks that can support their legal practice well beyond the conference.

Although networking is a hallmark of any legal conference, the core focus of the Midyear Conference lies in its robust educational offerings. This year's program is thoughtfully designed

to address the swiftly changing landscape of the legal profession, providing attendees with the latest insights on pressing topics such as artificial intelligence, cybersecurity, enhancing client experience, ongoing professional development and improving access to justice. Through a variety of sessions, participants will gain practical

FEATURED SPEAKERS

U.S. Magistrate Judge Jason Robertson



Judge Jason A. Robertson serves as a U.S. magistrate judge for the Eastern District of Oklahoma. An Oklahoma native and former trial attorney, he brings more than 25 years of criminal and civil trial experience to the federal bench.

Appointed in 2022, Judge Robertson also serves as an adjunct professor at the TU College of Law and frequently speaks on legal ethics, courtroom practice and the evolving role of technology in the legal profession.

Judge Robertson's work reflects a career devoted to trial advocacy, constitutional discipline and the enduring responsibility of the American courtroom.

Herb Rubenstein, J.D., MPA, PGA



Herb Rubenstein is an attorney and the author of numerous books on the legal profession, leadership and business. He has taught courses on AI, negotiation, ethics, change management and leadership at several universities and online for organizations including Thomson Reuters, the OBA, the Virginia Law Foundation and others. He has been a consultant to law firms, nonprofit organizations, educational organizations, government agencies and companies.

He received his law degree from Georgetown University. He is an active member of the D.C., Maryland, Virginia and Supreme Court bars. Mr. Rubenstein became a professional golfer at the age of 65 and was elected to the PGA when he was 67.

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OKLAHOMA BAR ASSOCIATION MIDYEAR CONFERENCE JUNE 17-19, 2026 • OKANA RESORT

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knowledge and tools to help navigate new challenges and opportunities in their daily practice, ensuring they remain at the forefront of innovation and ethical responsibility.

The conference, scheduled for June 17-19, represents an evolution from the longtime Solo & Small Firm Conference. While solo and small firm lawyers will continue to find the programming highly relevant, the Midyear Conference is designed to serve a broader cross-section of the profession. The sessions are intentionally varied so that attorneys from many practice settings – such as private firms, government offices and in-house roles – can find practical insights to bring back to their practices.

CONFERENCE SESSION HIGHLIGHTS

*U.S. Magistrate Judge Jason Robertson:
Ethics of AI and Integrity in
Legal Practice*

One of the most anticipated sessions of the conference will feature U.S. Magistrate Judge Jason Robertson of the Eastern District of Oklahoma. Judge Robertson will present a plenary program titled “Ethics of AI: Optional Technology. Mandatory Integrity.”

The session follows an order issued by Judge Robertson in October 2025 that quickly gained national attention for its thoughtful discussion of generative artificial intelligence and the responsibilities of lawyers using these tools. In the order, the court addressed a series of filings containing fabricated and inaccurate citations and used the opportunity to explain the continuing ethical duties that apply when attorneys rely on emerging technologies.

As Judge Robertson wrote in the order, “This ruling is not about technology. It is about trust.” The opinion emphasizes that while generative tools may assist lawyers in drafting, the duty to verify, review and stand behind every statement made in a filing remains firmly with the attorney.

Judge Robertson’s plenary session will further explore these themes and offer practical guidance on how lawyers can responsibly integrate AI into their practices while maintaining the professional standards that courts and clients expect. You can learn more about the judge’s order in my December 2025 *Oklahoma Bar Journal* article, “It Is About Trust: What an

Oklahoma Magistrate Judge’s Order Teaches Us About AI, Advocacy and Professional Courage.”¹

*Herb Rubenstein, Thursday
Morning Plenary Speaker*

Another highly anticipated speaker will be Herb Rubenstein, attorney, author and PGA golf professional.

During the opening plenary session on Thursday, Mr. Rubenstein will speak on lawyering in the here and now. He will also discuss mentoring in the legal profession during a second session during the conference.

Mr. Rubenstein’s sessions are sponsored by Phillips Murrah, an Oklahoma law firm dedicated to cultivating relationships and providing mentorship opportunities.

*Practical Sessions for
Today’s Law Practice*

Beyond the plenary session, the conference will feature a wide range of breakout sessions designed to address everyday challenges in modern law practice.

Technology and innovation will be prominent themes. Lawyers who are beginning to explore artificial intelligence tools can attend “AI:

Tools You Can Use for Beginners,” a practical introduction to emerging technologies and how they can assist lawyers in everyday work.

Cybersecurity will also be addressed in “Cybersecurity Concerns for Attorneys in the Age of Polymorphic AI,” which examines how evolving threats are reshaping digital risk for law firms and what attorneys should be doing now to protect client information.

Lawyers interested in improving the business side of their practice may want to attend “The Client Experience as a Competitive Edge,” presented by Kenton Brice, which focuses on how thoughtful client service strategies can strengthen a firm’s reputation and long-term growth.

Other sessions will address professional development and firm culture, including “Please Fix: The Art of Giving Feedback to Associates,” a program designed to help lawyers navigate one of the most challenging aspects of leadership in a law firm environment. Learning how to deliver clear, constructive feedback is a skill lawyers must develop as they transition from practitioner to mentor and manager.

The conference will also feature programming focused on substantive law updates and emerging legal issues. For example, “Update on Oklahoma Real Property Authority 2024-2025,” presented by Kraettli Q. Epperson, will provide insight into recent developments affecting real property practice in Oklahoma. Attorneys can also attend “Intellectual Property in Real

Life: Lessons From the Field for Businesses (and Their Attorneys),” presented by Kate Sullivan, which will explore how intellectual property issues increasingly intersect with everyday business operations. As innovation, branding and digital assets become central to modern business strategy, understanding the practical realities of intellectual property law is becoming important for lawyers well beyond traditional IP practice areas.

Access to Justice and Professional Service

Service to the public remains a central value of the legal profession, and the Midyear Conference programming reflects that commitment. A session titled “How to Easily Incorporate Pro Bono Into Your Law Firm,” presented by Katie Dilks and Jim Calloway, will provide practical ideas for attorneys who want to integrate pro bono service into their practice in manageable and meaningful ways.

For lawyers interested in appellate work, a panel featuring Jana Knott, Justin Lollman and Sharon Thomas will provide insights into appeals and the issues appellate practitioners encounter in Oklahoma courts.

A CONFERENCE BUILT FOR CONVERSATION

The Midyear Conference schedule intentionally balances educational sessions with opportunities for lawyers to connect with one another. Breakfasts, lunches and evening events provide time for informal

conversations that often prove just as valuable as the formal programming.

Those conversations can lead to referrals, mentorship relationships and collaborative opportunities that extend long after the conference ends.

LOOKING AHEAD

The legal profession is navigating a period of rapid change, particularly as technology reshapes how lawyers work and how clients interact with legal services. The Midyear Conference provides a rare opportunity to step away from the daily pace of practice and consider those changes in a thoughtful setting alongside colleagues.

Whether attorneys are interested in learning about artificial intelligence, improving client experience, strengthening firm culture or simply reconnecting with colleagues from across the state, the Midyear Conference offers programs designed to inform, challenge and inspire.

To learn more about the OBA Midyear Conference and to register, visit www.okbar.org/midyear.

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.

ENDNOTE

1. *OBJ*, December 2025, Vol. 96, No. 10.

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Kathleen Egan

FROM THE PRESIDENT

(continued from page 4)

the state answer thousands of legal questions by phone and online from members of their own communities, helping the public not only better understand their own personal legal situation but also how the law works in general. Any time a lawyer explains a legal right, the rule of law is strengthened.

That is why I encourage all OBA members to volunteer this May 1 to work a shift during the Ask A Lawyer event in your own community. Sign up through your local county bar. To volunteer in Oklahoma City, contact Christi Chandler at 405-236-8421 or office@okcbar.org. In the Tulsa area,

contact Mary Clement at 918-805-2352 or mary@clementlegalok.com. For all other counties, contact your local Law Day chair; visit <https://bit.ly/4rRxaSg> for more information.

This year, let's each take advantage of the opportunity Law Day provides to reflect on the freedoms and opportunities made possible by the rule of law and to consider how each of us, as lawyers, can help preserve it. After all, protecting the rule of law is not just about safeguarding legal principles. It is about ensuring that every person in this country retains the ability to pursue their own version of the American dream.

After all, protecting the rule of law is not just about safeguarding legal principles.



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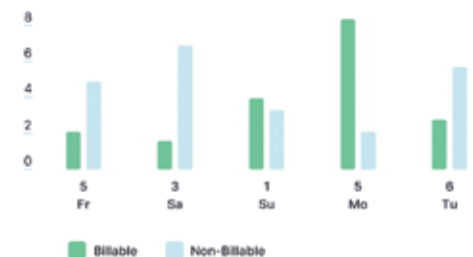
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Larry Smith
General

Meeting Summaries

The Oklahoma Bar Association Board of Governors met Jan. 16.

REPORT OF THE PRESIDENT

President Peckio reported she attended the OBA budget hearing before the Supreme Court, the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members, where she took her oath of office as 2026 OBA president. She also coordinated with Administration Director Brumit regarding the lunch and reception details following the ceremony. She reviewed the ABA proposed resolution regarding legal deserts with Immediate Past President Williams and ABA Delegate Hoch, signed service recognition certificates for OBA members celebrating milestone anniversaries and continued working on presidential appointments for 2026. She also attended and presented CLE during the Garfield County Bar Association's January meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Knott reported she attended the budget hearing at the Supreme Court, the Lawyers Helping Lawyers Foundation strategic planning meeting and communicated with its executive director, the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. She also began organizing the Legal Desert Task Force to

be discussed as an agenda item during this meeting.

REPORT OF THE VICE PRESIDENT

Vice President Bracken reported he attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the budget hearing at the Supreme Court, worked on Midyear Meeting planning with staff, met with President-Elect Knott about upcoming conference dates and discussed the ABA proposed resolution regarding legal desert issues with 2025 OBA President Williams. She met with Governor Dadoo, Bench and Bar Committee Co-Chair Leah Rudnicki and Access to Justice Foundation Executive Director Katie Dilks on eviction forms and judicial outreach initiatives. She also met with interim LHL Foundation Executive Director Sarah Jane Gillet to get acquainted with 2026 goals and objectives for the foundation and the OBA. She also attended meetings with A Chance to Change Executive Director Gina Stafford to discuss the upcoming contract renewal and annual report, with MAP Director Julie Bays and MIS Director John Santos on certain member benefit programs, and she discussed pending litigation

matters with the legal team, as well as possible member benefit programs with Chief Justice Dustin P. Rowe. She worked on final architectural agreement edits with Governor Cooper, attended the Membership Engagement

Committee meeting and the Garfield County Bar Association's January meeting with CLE presented by President Peckio, and she presented at the inaugural meeting of the ninth class of the OBA Leadership Academy.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Williams reported he reviewed the ABA proposed resolution regarding legal desert issues and conferred with Executive Director Johnson regarding the proposed resolution. He attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members, and he virtually attended the January meeting of the OBA Membership Engagement Committee. He also changed his National Conference of Bar Presidents profile to reflect his past-president status and registered for the NCBP Midyear Meeting.

BOARD MEMBER REPORTS

Governor Aspan reported she observed the December meeting of the Board of Governors and was sworn in as a governor at the swearing-in ceremony for 2026 officers and new board members.

She attended the has-been party for outgoing board members, participated in the Legal Aid Services of Oklahoma scenario planning session and participated in the PRC December meeting. **Governor Barker** reported he attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. Governor Cooper reported he worked on Bar Center Facilities Committee matters with Executive Director Johnson. **Governor Dadoo** reported she attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Jones** reported he attended the Board of Governors Christmas party and December board meeting as an observer. He also attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Hixon** reported he attended two Law Day Committee meetings and a session of the Tulsa County Bar Association's "Street Law" program at Central High School. He also attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Locke** reported he attended and hosted President-Elect Knott for a local visit to Cherokee County. **Governor Loyall** reported she attended the Board of Governors Christmas party and December

board meeting as an observer. She also attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Norman** reported he attended the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Oldfield** reported he attended the Kay County Bar Association meeting, the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor Trevillion** reported he attended the Access to Justice Committee meeting, the has-been party for outgoing board members and the swearing-in ceremony for 2026 officers and new board members. **Governor West** reported he attended the swearing-in ceremony for 2026 officers and new board members and the Cleveland County Bar Association monthly meeting.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Vice President Bracken reported the **Military Assistance Committee** is continuing its work to plan and

prepare for Heroes Day in November 2026 to provide legal assistance to military service members and veterans. Governor Oldfield said the **Legal Internship Committee** plans to meet in February. Governor West said the **Bar Association Technology Committee** plans to meet in February. Governor Hixon said the **Civil Procedure and Evidence Code Committee** will meet later in January. He also reported the **Law Day Committee** is meeting regularly and will hold its annual art contest judging event in February at the bar center. Governor Locke said the **Lawyers Helping Lawyers Assistance Program Committee** and the **Membership Engagement Committee** are both meeting regularly. Governor Loyall said the **Legislative Monitoring Committee** is meeting regularly and planning its annual Legislative Kickoff event on Jan. 30 at the bar center. Governor Dadoo said the **Bench and Bar Committee** is teaming up with the Access to Justice Foundation and the **Access to Justice Committee** to plan and host the new "ICYMI" series focused on "roadshow" education programming and CLE. The series will focus on eviction forms in 2026.

PROPOSED LEGAL DESERT TASK FORCE

The board passed a motion to form a task force to continue the work that began in 2025 under then-President Williams, aimed at addressing the lack of legal

services in rural areas. The task force will be asked to develop working plans to launch in 2026.

PRESIDENT PECKIO'S APPOINTMENTS

President Peckio made the following appointments:

- **Clients' Security Fund Committee:** President Peckio reappoints Micheal Salem, Norman, as chairperson and Peggy Stockwell, Norman, as vice chairperson with new terms beginning Jan. 1, 2026, and expiring Dec. 31, 2026.
- **MCLE Commission:** President Peckio reappoints Kimberly Hays, Tulsa, as chairperson with a new term beginning Jan. 1, 2026, and expiring Dec. 31, 2026. President Peckio reappoints Michael Joseph Davis, Durant, and Joshua Allen Edwards, Ada, and appoints Bryon Jay Will, Midwest City, to three-year terms beginning Jan. 1, 2026, and expiring Dec. 31, 2028.

UPCOMING 2026 OBA AND COUNTY BAR EVENTS

President Peckio reviewed upcoming bar-related events and activities involving the Board of Governors, including the Legislative Kickoff on Friday, Jan. 30, at the Oklahoma Bar Center and OBA Day at the Capitol on March 10 at the bar center/state Capitol in Oklahoma City.

The Oklahoma Bar Association Board of Governors met Feb. 20.

REPORT OF THE PRESIDENT

President Peckio reported she presented the OBA welcome message to more than 200 students participating in the 10th annual

Martin Luther King Jr./Judge Carlos Chappelle Cup mock trial competition in Tulsa, met with the OBA Executive Committee regarding certain aspects of pending litigation, reviewed pending legislation that relates to the association, wrote her monthly article for the February bar journal, facilitated and attended the Section and Committee Leadership Orientation, attended midyear meetings of the Southern Conference of Bar Presidents and the National Conference of Bar Presidents in San Antonio, attended the ABA Oklahoma delegates dinner at the ABA Midyear Meeting, signed milestone membership anniversary certificates for OBA members who have completed 50, 60 or 70 years of service, met with the TU College of Law dean and the alumni board chairman to discuss the Rural Deserts Task Force and other OBA/TU committee appointments and partnership opportunities, attended the Tulsa County Bar Foundation Judicial Dinner honoring new Tulsa County Presiding Judge David Guten, met with the Executive Director Johnson and the Legal Aid Services of Oklahoma executive director to discuss LASO needs, and she continued to work on OBA committee appointments.

REPORT OF THE PRESIDENT-ELECT

President-Elect Knott reported she conferred with the OBA Executive Committee regarding certain aspects of pending litigation, reviewed outside litigation counsel's invoices, attended midyear meetings of the Southern Conference of Bar Presidents and the National Conference of Bar Presidents in San Antonio, attended the ABA Oklahoma delegates dinner and cast her House of Delegates vote online, attended brunch with the OBA YLD Board of Directors

members attending the ABA meeting, attended the Legislative Kickoff event at the bar center, attended the Oklahoma Bar Foundation meeting, met virtually with the Lawyers Helping Lawyers Foundation executive director, met with the director of student services and the director of alumni relations for the OU College of Law, attended the Canadian County Bar Association's January meeting and worked on matters related to the newly launched Legal Desert Task Force.

REPORT OF THE VICE PRESIDENT

Vice President Bracken reported he conferred with the OBA Executive Committee regarding certain aspects of pending litigation and attended the Executive Committee meeting on Feb. 20, chaired the OBA Military Assistance Committee meeting, worked on details for the inaugural OBA Heroes Day on Nov. 11, attended the Legislative Kickoff event at bar center, attended an Oklahoma Bar Foundation meeting and met with OBA members to discuss future plans for the association.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she met with the OBA Executive Committee regarding certain aspects of pending litigation and attended the Executive Committee meeting on Feb. 20, hosted a meeting with Chief Justice Rowe and OBA staff at the bar center, reviewed pending legislation relating to the OBA and other bar business, attended the Legislative Kickoff event and the YLD January meeting, wrote her monthly article for the February bar journal, facilitated and attended the Section and Committee Leadership Orientation, attended a meeting

with LHL Foundation executive director, attended the Southern Conference of Bar Presidents and the National Conference of Bar Presidents meetings in San Antonio, attended brunch with the YLD board members attending the ABA meeting and attended the ABA Oklahoma delegates dinner, met with Bank of Oklahoma account management services for a quarterly check-in, met with the OU dean of students and the director of student services and alumni relations to discuss collaboration opportunities, met with YLD Chair-Elect Randy Gordon and Communications Director Rasmussen to update all YLD board positions and terms, met with Law Schools Committee Chair Pete Serrata, met with President Peckio and the executive director of Legal Aid Services of Oklahoma, attended the opening meeting for the Midyear Conference Planning Committee and attended a meeting with the executive directors of the LHL Foundation and services provider A Chance to Change to discuss upcoming contract renewals.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Williams reported he attended the Tulsa County Bar Association 2026 Judicial Dinner, electronically approved President Peckio's appointments, virtually conferred with OBA Executive Committee regarding certain aspects of pending litigation and attended the Executive Committee meeting on Feb. 20, reviewed outside litigation counsel's invoices, attended midyear meetings of the Southern Conference of Bar Presidents and the National Conference of Bar Presidents in San Antonio and attended the February 2026 meeting and CLE presentation of

the Tulsa County Bar Association's Energy/Mineral Law Section.

BOARD MEMBER REPORTS

Governor Aspan reported she attended the Tulsa County Bar Association December and January Board of Directors meetings and the TCBA post-holiday party, attended the ABA Civil Rights and Social Justice Section winter meeting, served as the Tulsa County Bar Association delegate to the ABA House of Delegates and attended several caucuses at the ABA Midyear Meeting in San Antonio, supported a Kansas Bar Association resolution at the ABA House of Delegates related to encouraging economics of law surveys by submitting a salmon slip to speak in favor of the resolution, and she attended the OBA Midyear Conference Planning Committee meeting. **Governor Barker** reported he attended the Garfield County Bar Association meeting. **Governor Cooper** reported he attended the Oklahoma County Bar Association Winter Seminar and the OCBA Executive Committee meeting, and he continued working on Oklahoma Bar Center facilities matters. **Governor Dodoo** reported she attended the Bench and Bar Committee meeting and met with the Access to Justice Foundation to work on the ICYMI course related to foreclosure forms, which was successfully presented in Oklahoma County. **Governor Jones** reported he virtually attended the Military Assistance Committee January meeting, and he also virtually attended the Bar Association Technology Committee February meeting. **Governor Hixon** reported he attended two meetings of the Civil Procedure and Evidence Code Committee, attended the Tulsa County Bar Association Board of Directors meeting and the TCBA/TCBF 2026 Judicial

Dinner, reviewed and approved a proof of the scholarly article he coauthored for the March 2026 *Oklahoma Bar Journal* and attended "A Fireside Chat with U.S. District Judge Gregory Frizzell" hosted by the Tulsa Lawyers Chapter of the Federalist Society. **Governor Loyall** reported she attended the Canadian County Bar Association's January meeting and has reached out to the chairs of the Legislative Monitoring Committee. **Governor Norman** reported by email he attended the Seminole County Bar Association Law Day planning meeting and the Access to Justice Committee February meeting. **Governor Oldfield** reported he attended the Disaster Response and Relief Committee meeting as well as the Kay County Bar Association meeting, and he had meetings and accepted appointments on the Scholarship Committee for the W.B. Clark and John Northcutt law school scholarships. **Governor Trevillion** reported he participated in an email discussion regarding group health insurance for OBA members. **Governor West** reported he attended the Cleveland County Bar Association executive meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Gage reported she attended the OBA YLD monthly meeting, the Midyear Conference Planning Committee meeting and the ABA Midyear Meeting in San Antonio.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Vice President Bracken said the **Lawyers Helping Lawyers Assistance Program Committee** is meeting regularly, and the **Military Assistance Committee** is continuing its work to plan the Heroes Day legal clinic event, which will coincide with Veterans Day; volunteers will be needed for that event. Governor Oldfield said the **Disaster Response and Relief Committee** met on Feb. 19, when recent wildfires in the state were discussed, and he said the **Legal Internship Committee** also met recently. Governor Jones said the **Bar Association Technology Committee** is meeting regularly. Governor Cooper reported the **Bar Center Facilities Committee** is finalizing an agreement with the architect, and it is expected to be signed within 30 days. The bidding process for potential construction contractors is also being discussed. Governor Barker said the **Awards Committee** has scheduled the first of its two regular yearly meetings for March. Governor Hixon reported the **Civil Procedure and Evidence Code Committee** has been meeting regularly and will soon have recommendations for various rule changes to present to the Board of Governors. He also said the **Law Day Committee** met Feb. 3 to judge student-submitted artwork for the annual contest; the first-place winners will be recognized at an awards ceremony planned for March 25 at the state Capitol Supreme Court Courtroom, after which Chief Justice Rowe will take the winners on a tour of the Capitol building. Executive Director Johnson reported the **Membership Engagement Committee** recently met and continues working on brochures for the public. They are also going to career fairs at law schools and have ordered “swag” to hand out. Governor Aspan reported

Vice President Bracken said the Lawyers Helping Lawyers Assistance Program Committee is meeting regularly, and the Military Assistance Committee is continuing its work to plan the Heroes Day legal clinic event, which will coincide with Veterans Day; volunteers will be needed for that event.

the **Clients’ Security Fund Committee** has its first meeting of 2026 scheduled in April. Governor Doodoo said the **Bench and Bar Committee** is working with the Access to Justice Foundation on the “ICYMI” traveling educational series. The first roadshow session was recently held in Oklahoma County, focusing on the plain-language legal forms that were recently made available to the public. President-Elect Knott added that she has reached out to Judge Strubhar in Canadian County to host a local event in her district. It was also reported that the **Law Schools Committee** will soon begin its annual meetings with the state’s three law schools, with reports of those meetings provided to the board by the end of the year. Governor Gage reported the Midyear Conference Planning Committee recently held its first meeting and will meet again in early March. Conference content is being discussed, and topics for the various CLE sessions are being considered. The YLD will be involved and will be asked to help plan social and networking activities during the conference.

RATIFICATION OF EMAIL VOTE

The board passed a motion to ratify an affirmative email vote that was taken to approve the following appointments made by President Peckio:

- **Clients’ Security Fund Committee:** President Peckio reappoints Micheal Salem, Norman, as chairperson and Peggy Stockwell, Norman, as vice chairperson with new terms beginning Jan. 1, 2026, and expiring Dec. 31, 2026.
- **MCLE Commission:** President Peckio reappoints Kimberly Hays, Tulsa, as chairperson with a new term beginning Jan. 1, 2026, and expiring Dec. 31, 2026. President Peckio reappoints Michael Joseph Davis, Durant, and Joshua Allen Edwards, Ada, and appoints Bryon Jay Will, Midwest City, to three-year terms beginning Jan. 1, 2026, and expiring Dec. 31, 2028.

PRESIDENT PECKIO'S APPOINTMENTS

The board passed a motion to approve the following appointment:

- *Oklahoma Bar Journal* Board of Editors: President Peckio appoints Christopher Blake Hauger of Wewoka to a three-year term representing District 8 that expires Dec. 31, 2028.

President Peckio also made the following leadership appointments for standing committees, with all terms beginning Jan. 1, 2026, and expiring Dec. 31, 2026.

- Access to Justice Committee: Chairperson Tiffani Armendariz and Vice Chairperson Brian Candelaria, with Governor Norman to serve as Board of Governors liaison
- Awards Committee: Chairperson Stephen Beam and Vice Chairperson Josh Edwards, with Governor Barker to serve as Board of Governors liaison
- Bar Association Technology Committee: Chairperson Collin Robert Walke, with Governors Jones, Cooper and West to serve as Board of Governors liaisons
- Bar Center Facilities Committee: Chairperson Cody Cooper, with Governor Jones to serve as Board of Governors liaison
- Bench and Bar Committee: Co-Chairperson Judge Richard Ogden, Co-Chairperson Leah T. Rudnicki, Co-Vice Chairperson Judge Thad Balkman and Co-Vice Chairperson Patrick Hayden Lane, with President-Elect Knott and

- Governor Dodoo to serve as Board of Governors liaisons
- Civil Procedure and Evidence Code Committee: Chairperson Spencer Habluetzel and Vice Chairperson Nicholas N. Hartman, with Governor Hixon to serve as Board of Governors liaison
- Disaster Response and Relief Committee: Chairperson Brian Candelaria, with Governor Oldfield to serve as Board of Governors liaison
- Law Day Committee: Chairperson Ed Wunch and Vice Chairperson Mary J. Clement, with Governor Hixon to serve as Board of Governors liaison
- Law Schools Committee: Chairperson Pete Serrata, 2027 Chairperson-Elect Brandelyn Murphy Duden and Vice Chairperson Grady Ryan Conrad
- Lawyers Helping Lawyers Assistance Program Committee: Chairperson Scott Goode and Vice Chairperson Sheila Naifeh, with Vice President Bracken and Governor Locke to serve as Board of Governors liaisons
- Legal Internship Committee: Chairperson Trent Hall Baggett, with Governor Oldfield to serve as Board of Governors liaison
- Legislative Monitoring Committee: Co-Chairperson Teena Gunter and Co-Chairperson Cooper Brett Robinson, with Governor Loyall to serve as Board of Governors liaison
- Membership Engagement Committee: Co-Chairperson Tim DeClerck and

- Co-Chairperson April Moaning, with Governor Locke to serve as Board of Governors liaison
- Military Assistance Committee: Chairperson Shea Bracken and Vice Chairperson John Cannon, with Governor Cooper to serve as Board of Governors liaison
- Rules of Professional Conduct Committee: Chairperson Judge Thad Balkman, with Governor Oldfield to serve as Board of Governors liaison
- Midyear Conference Planning Committee: Chairperson Morgan Smith, with Governor Aspan and Governor Gage to serve as Board of Governors liaisons
- Strategic Planning Committee: Chairperson Jana Knott, with Past President Williams to serve as Board of Governors liaison

UPCOMING 2026 OBA AND COUNTY BAR EVENTS

President Peckio reviewed upcoming bar-related events and activities involving the Board of Governors, including OBA Day at the Capitol on March 10 at the bar center/state Capitol in Oklahoma City and the OBA Midyear Conference June 17-19 at the OKANA Resort in Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in March, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held in Durant on Friday, April 17.

Keeping Courts Running

The New OBF Grant Program Helps Retain Experienced Court Reporters

By Renee DeMoss

THE OKLAHOMA BAR Foundation is proud to announce a new grant program beginning this year that will aid court reporters who live and work in Oklahoma. The exodus of court reporters from our state is creating a crisis in access to justice. This grant is designed to address that crisis, helping retain Oklahoma's court reporters.

Along with much of the nation, Oklahoma is already facing a critical long-term shortage of court reporters – their number has declined dramatically in the last decade. Many are leaving as they reach retirement age; at the same time, the number of students enrolling in court reporting school every year is plummeting. For instance, nationwide, over 1,100 reporters are retiring every year, while only 200 new reporters are joining the field. The decline is acutely felt in rural Oklahoma. Twenty-five of the 77 Oklahoma counties have no court reporters on staff at all, and in one rural area, only one reporter is covering up to five counties, according to Tonya Reynaert, an official court reporter for the state of Oklahoma.

Another issue affecting the exodus is low pay. Neighboring



states like Texas and Kansas offer \$8,000-\$10,000 more in salary for experienced reporters compared to Oklahoma. Further, court reporters are often required to purchase their own equipment for their jobs.

To help stem the tide of the loss of Oklahoma's court reporters, this new grant is designed to encourage reporters to remain in their jobs past retirement age. The OBF will pay \$15,000 over a three-year period to qualifying reporters who stay in their jobs for three more years. The payments should help encourage court reporters with

more years of experience to stay, while at the same time, preserve those courtroom employees who are often keepers of local history and procedural knowledge.

This program is similar to another grant program set up several years ago, under which the OBF makes payments to newly hired court reporters who work in designated rural Oklahoma district courts. A payment of \$15,000 is made to a court reporter who agrees to work for three years in a rural county. That program has proven to be a success, with 16 new reporters participating in the program.

Accurate, verbatim transcripts are critical for many aspects of the legal process, and court reporters will always play a vital role in the legal field. The Oklahoma Bar Foundation will continue to look for ways to play a role in protecting this crucial element of access to justice.

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

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February Bar Examinees Fueled by Snacks and Solidarity

By Alexandra J. “Allie” Gage

AS ALL IN OUR PROFESSION likely remember, there are few rites of passage more humbling than the bar exam. It is two days of intense focus, carefully calibrated anxiety and the sudden realization that you now have a love-hate relationship with No. 2 pencils.

This February, 132 aspiring attorneys anxiously sat for the bar exam in Oklahoma. And while they may have arrived armed with cautious optimism, they didn’t walk in alone. Thanks to the OBA Young Lawyers Division, each test taker received a thoughtfully assembled bar exam kit – part survival pack, part stress relief, part silent cheerleader.

Inside these kits were the essentials: sharpened pencils (because mechanical pencils are apparently too rebellious for this moment), sturdy erasers for second thoughts, snacks to combat the 3:17 p.m. energy crash, stress balls for the inevitable “What is a secured transaction, really?” spiral, acetaminophen for the brain-crushing multiple-choice sections and earplugs to muffle the symphony of synchronized page turning. It may not look glamorous, but it is deeply practical and profoundly kind.

The bar exam is a test of knowledge, yes. But it is also a test of endurance, focus and composure. It asks candidates to summon three years of study and distill



The OBA Young Lawyers Division assembles bar exam survival kits at the bar center for candidates taking the bar exam. This thoughtful act of solidarity is an annual YLD tradition.



it into essays, performance tests and multiple-choice bubbles. It demands clarity under pressure and confidence under fluorescent lighting. In that setting, a granola bar becomes more than a snack. It becomes fuel.

As the service-driven arm of the Oklahoma Bar Association, the YLD is committed to strengthening and supporting our broader community – and that commitment



includes the profession itself. By showing up for bar examinees in this tangible way, the YLD reminds future lawyers that service begins long before a first client meeting or courtroom appearance. It begins with taking care of one another.

What makes this effort especially meaningful is who is behind it. The members of the YLD remember all too well what it felt like to sit in those chairs. They

remember the quiet nerves, the over-packed clear plastic bags, the desperate hope that they studied the right version of future interests, the never-ending stress that their computer didn't crash before they hit the submit button. And so they show up every February and July – not with lectures or hypotheticals but with pencils, trail mix and solidarity.

This simple act sends a powerful message: You belong here. You are supported. The legal community you are about to enter is already rooting for you. These kits will not answer a single multiple-choice question. They will not draft an essay or outline a rule statement. But they will steady hands, quiet distractions and offer a small but powerful reminder that you are part of something bigger than this exam.

Ms. Gage is an estate planning attorney with Oath Law in Tulsa. She serves as chair of the OBA Young Lawyers Division.

ON THE MOVE

Eric S. Smith and **Randie Thompson** have joined the law firm of McAfee & Taft in the Employee Benefits and Executive Compensation Practice Group. Mr. Smith's work focuses on representing and advising regional and national clients regarding the design, implementation and administration of a wide variety of employee benefit plans, including tax-favored retirement plans, non-qualified deferred compensation plans and health and welfare plans. He is a member of the Core Lawyer Working Group for the Church Alliance and devotes a significant portion of his practice to serving church denominational benefit plans and programs, churches and ministry organizations. Ms. Thompson is an Employee Retirement Income Security Act (ERISA) attorney with more than 25 years of experience in private practice and private industry. She practices in employee benefits law, with a focus on health and welfare benefit plan design, administration, compliance and governance. Throughout her career, she has gained experience representing

complex health plan arrangements, including self-funded single-employer plans, multiple-employer welfare arrangements, voluntary employees' beneficiary associations, Native American tribal health plans and group purchasing organizations.

Jonathan A. Graber, Alexandra M. "Alex" King, Bailey L. McKay, Scott V. Morgan and **M. Travis Williams** have joined the law firm of Hall Estill. Mr. Graber is of counsel in the Tulsa office and serves as chief legal officer for Penelope Holdings. He advises clients on advanced business structures, asset protection and risk mitigation planning and handles complex finance transactions and the development of sophisticated tax strategies. He is also a licensed real estate broker in Oklahoma and licensed to practice law in both Oklahoma and Wyoming. Ms. King is an associate in the Tulsa office. She focuses her practice on civil litigation, oil and gas and contract law. She brings diverse legal experience shaped by leadership roles in the Business

Law Society and the Women's Law Caucus at the TU College of Law, as well as service as the business manager of the *Tulsa Law Review* and a judicial externship with Judge Christine D. Little. Mr. McKay is an associate in the Oklahoma City office. His practice focuses on commercial and business litigation, personal injury, premises liability and insurance law and tort defense. In addition, he represents insurers in pre-suit matters, advising on strategy and developing effective approaches to early resolution. Mr. Morgan is a shareholder in the Tulsa office. He focuses his practice on oil and gas and construction law. He regularly serves as first chair in jury and nonjury trials and alternative dispute resolution matters, and his appellate work has resulted in multiple published opinions. Mr. Williams is special counsel in the Tulsa office. He focuses his practice on the areas of estate planning, oil and gas litigation, real estate transactions, title examination and general civil litigation. He also assists clients in general business transactions.

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 August issue must be received by July 1.

Kayli L. Gillespie has joined the Oklahoma City office of Fox Rothschild as counsel in the Litigation Department. She practices in the areas of oil and gas and energy business law. She handles disputes surrounding surface and subsurface damage claims, as well as claims involving contractual obligations, and analyzes Production Revenue Standards Act claims for clients to determine possible liability. Prior to joining the firm, Ms. Gillespie was an attorney at Elias, Books, Brown & Nelson. She serves on the boards of the Oklahoma County Bar Association, the Institute of Energy Law and the Casady School Alumni Association. She received her J.D. from the University of South Carolina Joseph F. Rice School of Law.

Mike Atkinson has joined the Tulsa law firm of Jayne Peters McVicker Burke Askew & Parker as of counsel. After graduating from the OU College of Law,

he practiced criminal law and obtained his LL.M. in antitrust from the University of Texas at Austin School of Law. He has served as an adjunct professor at the TU College of Law, faculty at the Insurance Counsel Trial Academy, state chair of the American College of Trial Lawyers and state chair for the International Academy of Trial Lawyers. He is primarily involved in handling commercial litigation and cases involving defective products and insurance bad faith.

Kelsey T. Pierce has been appointed as a director at the law firm of Barber & Bartz. Mr. Pierce has been with the firm since 2008 and has been a shareholder since 2016. He practices in all areas of commercial law, with a primary focus on real estate transactions. Mr. Pierce's practice also focuses on business transactions, mergers and acquisitions, business organizations and other matters involving real estate, zoning and land use.

Adrienne Cash and Stephanie Mitchell have been elected shareholders at the Tulsa law firm of Barber & Bartz. Ms. Cash, a trial attorney, has been with the firm for 10 years and represents individuals, corporations and local and family-owned businesses in labor and employment, complex commercial, real estate and construction litigation. She dedicates a significant portion of her practice to litigating and mediating complex commercial litigation. Ms. Mitchell has practiced in the areas of estate planning, guardianship, probate and trusts for more than 13 years. While at Barber & Bartz for the past seven years and while developing her elder law practice, she has focused on the areas of special needs and Medicaid planning but also represents clients in litigation and mediation in contested matters in those areas.

AT THE PODIUM

Paul R. Foster presented "Dynamic Interactive Question and Answer" on a panel of banking regulators from the Federal Reserve, the Federal Deposit Insurance Corp., the Oklahoma Corporation Commission and the Oklahoma

Banking Department during the Community Bankers Association of Oklahoma Winter Leadership Retreat in Palm Springs, California. He practices at Paul Foster Law Offices PC in Norman.

IN MEMORIAM

Daniel Daugherty Adams Jr. of Oklahoma City died Feb. 8. He was born Aug. 15, 1942, in Oklahoma City. Mr. Adams attended Linwood Elementary, Taft Middle School and Northwest Classen High School before continuing his education at Davidson College. At Davidson, he participated in ROTC for four years, played soccer and baseball and contributed cartoons to *The Davidsonian*. He received his J.D. from the OU College of Law in 1997. **Mr. Adams served in the U.S. Army, with his initial post in the Military Intelligence Office in Omaha, Nebraska, which was cut short when he was promoted to captain and deployed to Vietnam as a counterintelligence advisor. He was awarded the Bronze Star.** He served as vice president at Liberty National Bank; senior vice president, treasurer and board member at Mid-Continent Life Insurance Co.; and vice president and investment officer at American Fidelity Assurance Co. He was a member of the ABA, the American Council of Life Insurers and the Income Property Advisory Council of the Mortgage Bankers Association. He also served as chairman of the Life Co. Mortgage and Real Estate Council and the Westminster School Board of Trustees, among other positions.

Michael Charles Bell of Norman died Dec. 30, 2025. He was born Dec. 5, 1966, in Pryor. Mr. Bell graduated from Pauls Valley High School in 1985 and earned a degree in agricultural economics from OSU in 1990, followed by his J.D. from the TU College of Law in 1993. He practiced law for 32 years, focusing on

the areas of workers' compensation, Social Security disability and personal injury law. He was the owner of Michael C. Bell Law Firm in Norman and served as chairman of the Multiple Injury Trust Fund board. Mr. Bell was a member of the ABA, the U.S. District Court for the Western District of Oklahoma, the Chickasaw Nation Bar Association and the National Organization of Social Security Claimants' Representatives.

Elizabeth Chronos of Tulsa died Jan. 21. She was born Dec. 4, 1947, in Okmulgee. She attended Okmulgee High School, where she was the head cheerleader and named homecoming queen. She graduated *summa cum laude* from the University of Texas at Austin in 1970 and was elected to the Phi Beta Kappa Honor Society. Ms. Chronos began her career as a legal book editor with Lawyers Cooperative Publishing Co. in Rochester, New York. She went on to receive her J.D. from the TU College of Law in 1997. While in law school, she served as president of the Women's Law Caucus and received American Jurisprudence awards in intellectual property, criminal law, Native American law and international law. Ms. Chronos practiced law in Tulsa for nearly 30 years. She was honored with the Award for Outstanding Pro Bono Service by Legal Aid Services of Oklahoma.

James S. Colgan of Tulsa died Feb. 12. He was born Nov. 27, 1939, in Hutchinson, Kansas, and graduated from Duncan High School. Mr. Colgan began his career working as a delivery and stockroom clerk at State Federal

Savings & Loan. He earned his bachelor's degree and his J.D. from the TU College of Law in 1969. His leadership led him to become president and director of State Federal Savings & Loan before becoming president of Oak Tree Federal Savings Bank. Mr. Colgan also served as the director of the Tulsa office for the Department of Housing and Urban Development, where he was named National Field Office Director of the Year for his work in Oklahoma City following the Alfred P. Murrah Federal Building bombing. He was a member of several organizations, boards and committees, including the city of Tulsa's first Audit Committee, Tulsa Habitat for Humanity (as chair of the board), the OBA (a proud 50-year member), Up With Trees and more. He also held roles on the State Advisory Group for Juvenile Justice and Delinquency Prevention, the Downtown Housing Fund and the Economic Development Commission, among others.

Brian Maurice Dell of Oklahoma City died Dec. 1, 2025. He was born June 6, 1941, in Oklahoma City and graduated from Bishop McGuinness Catholic High School in 1959. **Mr. Dell enlisted in the U.S. Army in 1961 and was assigned to the U.S. Army Language School in Monterey, California, to study Mandarin Chinese. He served in Okinawa, Japan, and at the National Security Agency in Fort Meade, Maryland, as a translator/interpreter before his enlistment was up in 1964.** He graduated with a bachelor's degree in business from OCU and a master's degree in accounting from OU. He received his J.D. from the OU College of Law

in 1976. He held a number of jobs before becoming a lawyer, including merchant seaman, clerk with the post office, CPA and accounting professor. Mr. Dell was admitted to the practice of law in Oklahoma in 1977 and in Texas in 2004. He was admitted to practice before the U.S. Supreme Court; the U.S. Circuit Courts for the 5th, 9th and 10th circuits; the U.S. Tax Court; and U.S. district courts in Oklahoma, Texas and Arkansas.

Thomas G. Ferguson Jr. of Edmond died Aug. 16, 2025. He was born May 12, 1948, in Spokane, Washington. He graduated from Columbus High School in Columbus, Georgia, in 1966 and attended the Virginia Military Institute in Lexington, Virginia. He received his J.D. from the Washington and Lee University School of Law in 1973. **He then moved to Lawton, where he was commissioned as a first lieutenant, serving in the Field Artillery at Fort Sill. After passing the Virginia bar exam and being admitted to practice law, he was promoted to captain in the Army Judge Advocate General's Corps and served from 1973 until 1977. After being honorably discharged, he joined a private practice in Bluefield, West Virginia. He later joined the Army Reserve, again serving as a JAG officer, and rose to the rank of lieutenant colonel before retiring in 1998. He received two Meritorious Service Medals and honorably served his country for over 23 years. He was a trial attorney, practicing law at his firm, Walker, Ferguson & Ferguson. His legal career spanned more than 52 years. He also served as the city**

attorney for Union City and was a member of the Defense Research Institute.

Frank L. Gruntkowski of Tulsa died Dec. 19, 2025. He was born Oct. 25, 1970, in Cleveland, Ohio. Mr. Gruntkowski received his J.D. from the TU College of Law in 1996. He was a practicing attorney in Tulsa.

Robert George Haney of Miami died March 2. He was born May 12, 1950, in Tulsa. He had lived in Miami since 1975, moving from Hominy. Mr. Haney attended OSU and received his J.D. from the OU College of Law in 1975. He was in private law practice before becoming a district judge for Ottawa and Delaware counties. He was a member of Miami Masonic Lodge #140, the Tulsa Scottish Rite Consistory, the Akdar Shrine and the Grand Lake Shrine Club, among other organizations.

Timothy D. Leonard of Oklahoma City died March 2. He was born Jan. 22, 1940, in Beaver. He attended Beaver High School, where he played basketball, ran track and served as class president for three years. He attended OU on a four-year track scholarship, was a member of the Beta Theta Pi fraternity and graduated with a bachelor's degree in history in 1962. Mr. Leonard received his J.D. from the OU College of Law in 1965. **He joined the U.S. Navy Judge Advocate General's Corps and attained the rank of lieutenant commander. He served in the Pentagon and as a White House military aide to President Lyndon B. Johnson. He served as an assistant attorney general under**

G.T. Blankenship before entering private practice. In 1970, he went into law practice with his father at the firm of Leonard, Trippet & Leonard (later Leonard, Trippet, Leonard & Kee). In 1979, he was elected to the Oklahoma Senate, where he served as minority leader. He went on to serve as U.S. attorney for the Western District of Oklahoma and a U.S. district judge from 1991 until 2026.

Lawrence A. Martin II of Cleveland died Jan. 3. He was born March 27, 1949, in Fort Smith, Arkansas. He graduated from Cleveland schools in 1967 and attended Rogers State University, Northeastern State University and OSU. He received his J.D. from the TU College of Law. After returning to Cleveland, he opened a private law practice where he represented underprivileged children and the public. Mr. Martin served as a Pawnee County district attorney before opening a new private law office in Cleveland. He represented many clients and held offices as the city judge for Cleveland and Mannford.

Gary L. McKnight of McAlester died Dec. 19, 2025. He was born Jan. 2, 1942, in McAlester. He graduated from McAlester High School in 1959, earned a bachelor's degree in engineering from OU in 1964 and received his J.D. from the OU College of Law in 1966. **Mr. McKnight served two years as a first lieutenant in the U.S. Army. He then returned to McAlester to begin his legal career, including serving as an assistant district attorney. In 1970, he launched his real estate venture with McKnight Realty and opened his own law**

firm, where he practiced for more than 50 years. His practice focused on estate planning, real estate, probate and energy law.

Gerard F. Pignato of Norman died Feb. 24. He was born April 22, 1959, in Meriden, Connecticut. He grew up in Elmira, New York, and graduated from Thomas A. Edison High School in 1977, ranked third in his class. Mr. Pignato played baseball at Brown University and was a member of the Phi Delta Sigma fraternity. He graduated in 1981 and received his J.D. from the OU College of Law in 1984. Mr. Pignato practiced law for 40 years and was proud to serve as a trial lawyer.

Troy Wayne Poteete of Webbers Falls died Feb. 5. He was born March 6, 1955, in Muskogee. Mr. Poteete received his J.D. from the TU College of Law in 2001. He served as a Cherokee Nation Tribal Council member from 1991 to 1999, helping shape legislative policy during a pivotal era of growth, and his dedication to protecting the tribe continued after he was appointed a justice of the Cherokee Nation Supreme Court in 2007. He also served as director of the Arkansas Riverbed Authority. He helped found the National Trail of Tears Association and served as the executive director.

Robert Lee Rabon of Hugo died Jan. 30. He was born Jan. 1, 1961, in Hugo. He graduated from Hugo High School in 1979, where he lettered on the basketball team. He graduated from OSU in 1984 with a bachelor's degree in history. Mr. Rabon received his J.D. from the OCU School of Law in 1988, graduating second in his class. He practiced law alongside his father in Hugo for more than 30 years. He was an advocate in shaping the modern application of the Indian Child Welfare Act, which applies to tribes across Oklahoma.

Keith Sims of Bartlesville died Feb. 16. He was born Oct. 6, 1949, in Tulsa. He attended Sand Springs Public Schools and graduated from Charles Page High School in 1967. Mr. Sims earned his associate's degrees in applied science and police science in 1974 and his bachelor's degree in criminal justice in 1985. He received his J.D. from the California Western School of Law in 1987. Upon graduation, he returned to Sand Springs and eventually moved to Bartlesville in 1989. He was admitted to the bar in 1988. **Mr. Sims served in the U.S. Army from 1969 to 1971 and left as a police sergeant.** He worked for the Bartlesville Police Department from 1971 to 1981. He then worked at Heskett & Heskett Law Firm and later served as the assistant district attorney in Osage County. As an

ADA, he prosecuted felonies and misdemeanors and represented the state on behalf of children in deprived actions. Mr. Sims retired at the age of 62 but continued to work for Osage County as an attorney, representing the interests of deprived children. His most notable achievements included being named attorney of the year by the Pawnee/Osage CASA in 2014 and receiving a citation from the Oklahoma State Senate, District 10, State House District 36 and speaker of the house for his professional accomplishments and years of service to Oklahoma citizens. He was also recognized by the Oklahoma District Attorneys Council.

Stuart Lee Yates of Las Vegas died Sept. 9, 2024. He was born July 14, 1962. Mr. Yates received his J.D. from the OCU School of Law in 1995.

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Oklahoma District Courts Partner With OU To Launch Juror Support Program

IN A GROUNDBREAKING effort to support citizens who serve on juries in difficult criminal cases, the Oklahoma Judges Association has partnered with OU to launch a juror counseling and support initiative designed to assist individuals who experience emotional or psychological distress following jury service.

The program, which began in March in Cleveland County and is expected to expand to Oklahoma County in the near future, will provide access to trauma-informed counseling services for jurors who have served in cases involving violent crime, sexual abuse and other traumatic subject matter. Through this collaboration, qualified mental health professionals and supervised OU students will offer resources and support to jurors who may struggle with the lingering impact of exposure to graphic testimony, images, video evidence and disturbing facts presented during trial.

Judges across Oklahoma have increasingly recognized that while jury service is a cornerstone of the justice system, the emotional toll it can take on citizens asked to evaluate tragic and violent evidence has historically gone largely unrecognized. Jurors are asked to see images, watch videos, examine physical evidence and hear testimony describing some of the most heinous acts imaginable. Oklahoma trial judges note that courts have become increasingly aware that some jurors leave the courthouse carrying the emotional weight of the experiences they encountered during trial.

“Many jurors complete their service having fulfilled an essential civic responsibility, but also carrying images and experiences they did not anticipate,” said District Judge Leah Edwards. “Their service is vital to the justice system, and it is important that after they have completed that duty, they have access to resources that help them process those experiences and restore their confidence in the good that comes from justice being served.”

OU has joined the effort, recognizing both the importance of the issue and the opportunity to provide meaningful public service while offering real-world learning experiences for students in counseling, psychology and related disciplines under professional supervision.

Through the partnership, the university will work with the district courts to develop trauma-informed pro bono services designed specifically for jurors who may experience lingering emotional effects after participating in difficult trials, representing a thoughtful and proactive approach to addressing an issue courts across the country are beginning to recognize.

Judicial leaders believe the collaboration could become a model program nationwide, demonstrating how courts and academic institutions can work together to support the citizens who make the jury system possible.

“Our jurors give their time, their attention and their judgment in service of justice,” Judge Edwards added. “This program reflects a simple but powerful idea: when our citizens step forward to serve the justice system, the justice system should also be ready to care for them.”



The Oklahoma District Courts announce a recently launched Juror Counseling Initiative in conjunction with OU.

Front row, from left: Judge Lori Puckett, McClain County District Court; Judge Leah Edwards, McClain/Garvin County District Court; Judge Mindy Beare, Pittsburg County District Court; Judge Sheila Stinson, Oklahoma County District Court; Damon Cravens, OU Human Relations/Psychology academic advisor.

Middle row, from left: Dr. Katie Allen, OU Department of Human Relations assistant professor and clinical mental health counseling program coordinator (Norman); Judge Thad Balkman, Cleveland County District Court; Judge Stuart Tate, Osage County District Court; Judge Donna Dirickson, Custer/Beckham County District Court; Judge Kathryn Savage, Oklahoma County District Court.

Back row, from left: Dr. Wesley Long, OU Human Relations department chair; Elizabeth R. Nelson, LPC-S, OU Department of Psychology instructor.

The program is expected to begin serving jurors in Cleveland County immediately, with plans to expand services to Oklahoma County as the program develops. If successful, the initiative may serve as a blueprint for a broader statewide effort to ensure jurors across Oklahoma have access to support when needed.

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Patrick Siewert is Director of Digital Forensics & eDiscovery for ArcherHall, based in Richmond, Virginia. Patrick has 15 years of law enforcement experience highlighted by high-profile and precedent-setting case work investigating electronically facilitated crime. He founded Pro Digital Forensic Consulting in 2013, which was acquired by ArcherHall in 2022. Patrick has completed multiple trainings and certificates in the practice areas of computer forensics, mobile device forensics and analysis of cellular historical location records and is well-versed in their value in civil and criminal litigation. He has also qualified as an expert witness in the aforementioned disciplines in multiple courts across the country and is an adjunct professor of digital forensics at Virginia Commonwealth University. ArcherHall offers a full suite of digital forensic & eDiscovery services for the litigation community nationwide.

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