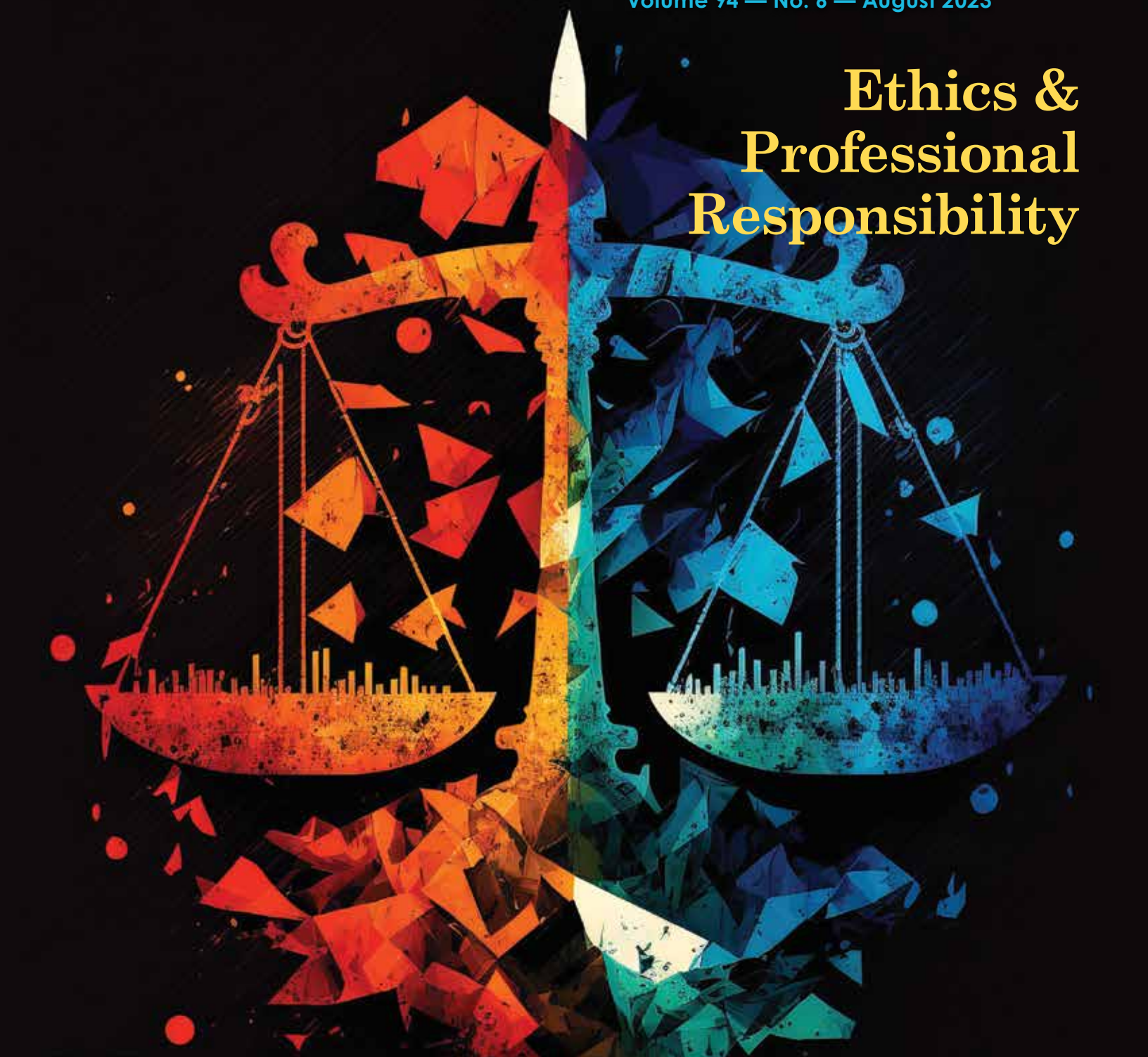
ALSO INSIDE: Legislative Confirmation of *Fulks* • Law Day Debrief • Women in Law Conference
Meet the OBA Membership Engagement Committee • Annual Meeting
Summer Events Photo Highlights • Legislative Monitoring Committee

THE OKLAHOMA BAR
Journal
Volume 94 — No. 6 — August 2023

Ethics & Professional Responsibility



oba cle
continuing legal education

FRIDAY,
SEPTEMBER 8, 2023

9 a.m. - Noon

LIVE WEBCAST Available

MCLE 3/0

The Evolution of Cannabis in Oklahoma

PROGRAM PLANNER:
Felina Rivera, *Owner/Managing Attorney, Renaissance Legal Services, PLLC*

In this presentation, attorney Felina Rivera is joined by Dr. Joel Jacobs, former Harvard professor and expert in the cannabis industry, as well as other Oklahoma cannabis attorneys, to provide a comprehensive and current overview of Oklahoma's medical marijuana industry.

Since 2018 and the passage of the voter-initiative medicinal use program, nearly every law pertaining to the governance of marijuana in the state has evolved. State lawmakers have been tasked with regulating the industry, but a misunderstanding of this long-stigmatized plant medicine has led to rules that prove nearly impossible for business owners to comply with. Meanwhile, the opening of the market has allowed for science to produce peer-reviewed research related to the medicinal characters of the Cannabis sativa L plant, thus helping the public gain a greater understanding of its uses and fuel legalization efforts across the country.

In this presentation, attorneys involved in the cannabis industry will provide a summary of the evolution of marijuana related rules and regulations since the start of Oklahoma's program, share key cases dealing with the 2nd amendment rights of marijuana users, the enforceability of cannabis contracts, claims against state regulatory agencies within Oklahoma, and the current status of Oklahoma's marijuana laws.

Dr. Jacobs, a 10-year veteran of the cannabis industry holding a doctorate in molecular genetics and biochemistry, will provide valuable insight to the science of cannabis, as well as real-life examples of the challenges medical marijuana businesses face when trying to comply with the ever-changing laws and regulations in which business owners are beholden.

Of equal interest, Dr. Jacobs will provide insight into the progression of lab science as it pertains to the processing, extraction, and artificial creation of THC (or Delta-9) alternatives such as Delta-8 and THCO, the similarities, differences, and sometimes indistinguishable characteristics of hemp and marijuana, and the distinctions being made by the FDA and DEA as each cannabis derivative relates to the Controlled Substances Act.

Counsel and Dr. Jacobs will also informally discuss the ways in which laws could be amended to further the common goals of providing a safe medical product to patients, without overregulating an industry that is teetering at the brink of legal market subversion.

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

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

LawPay

AN AFFINIPAY SOLUTION

+

OKLAHOMA BAR ASSOCIATION SINCE 1904

Member Benefit Provider

"**I love LawPay!** I'm not sure why I waited so long to get it set up."

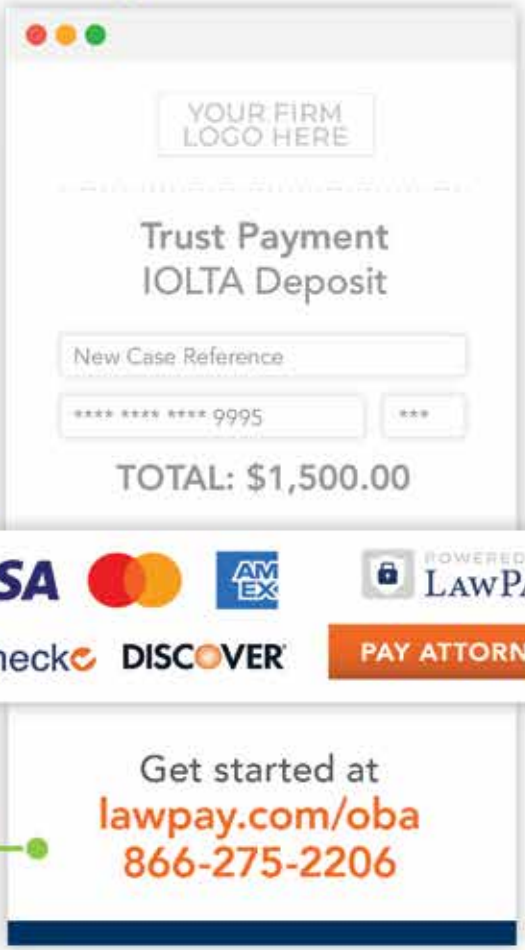
– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

22% increase in cash flow with online payments

Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA

62% of bills sent online are paid in 24 hours



Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA, Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.

Get a business owner's policy from a name you know you can trust.

Our coverage is designed specifically for law firms – including property, valuable papers and records, computers, artwork and even intangibles like loss of earnings.

Annual premiums start as low as $550.

Learn more and apply today.

or visit oamic.com/office-package

LET US PROTECT YOU.

800.318.7505 | OAMIC.COM

OKLAHOMA ATTORNEYS
MUTUAL INSURANCE COMPANY

THE OKLAHOMA BAR Journal

contents

August 2023 • Vol. 94 • No. 6

THEME: ETHICS & PROFESSIONAL RESPONSIBILITY

Editor: Melissa DeLacerda

FEATURES

6 | Work From ~~Home~~ Anywhere: Ethical Considerations in the Post-Pandemic Era of Virtual Lawyering
By Paige A. Masters

16 | A Lesson From *Seinfeld*: How Generative AI Issues Remind Us to Be True to Our Oaths
By Jandra Cox

22 | Judges on Social Media
By Judge Thad Balkman

30 | Like Brothers, Like Sisters
By Travis Pickens

36 | Pro Bono as an Ethical Obligation and Opportunity
By Melissa Brooks and Katie Dilks

DEPARTMENTS

4 | From the President
66 | From the Executive Director
68 | Law Practice Tips
72 | Ethics & Professional Responsibility
74 | Board of Governors Actions
86 | Oklahoma Bar Foundation News
89 | Young Lawyers Division
92 | For Your Information
96 | Bench & Bar Briefs
100 | In Memoriam
104 | Editorial Calendar
112 | The Back Page

PLUS

40 | Probate 'Venue' Is, and Always Has Been, 'Jurisdictional': Legislative Confirmation of *Fulks*
By Kraettli Q. Epperson

45 | Annual Meeting

49 | Women in Law Conference

50 | Law Day Debrief
By Ed Wunch

55 | Legislative Monitoring Committee
By Shanda McKenney

56 | Meet the OBA Membership Engagement Committee
By Tim DeClerck and April Moaning

58 | Solo & Small Firm Conference Photo Highlights

60 | Sovereignty Symposium Photo Highlights

PAGE 40 – Legislative Confirmation of *Fulks*

PAGE 58 – Solo & Small Firm Conference Photo Highlights

Make Ethical Behavior a Daily Practice

By Brian Hermanson

ONE OF THE MAJOR GOALS of my year as OBA president is to open a dialog among our state's attorneys and judges about the ethical issues that face each of us on a daily basis. While I would think that many people feel uncomfortable talking about what they perceive as ethical violations that occur in our profession, only by having those discussions can we educate ourselves and others about how we can improve the way that we conduct ourselves as lawyers.

> 'Ethics is knowing the difference between what you have a right to do and what is right to do.'
>
> – Potter Stewart

In writing about this, I don't hold myself as an expert on this issue; like many of you, I am only an observer. With this month's *Oklahoma Bar Journal* devoted to the topic of Ethics and Professional Responsibility, it seems important for me to try to address some of those observations.

Brian Hermanson serves as district attorney for the 8th District of Oklahoma.
580-362-2571
brian.hermanson@dac.state.ok.us

While I know ethical abuses can occur in any practice setting, I want to specifically address what I see in trial work. I have been a trial lawyer almost all my adult life. I was fortunate to have been tutored in the law by people I consider to be legal giants. They taught me to show respect to those attorneys who I had cases with and to avoid doing things in the courtroom that would detract from our profession. It has been my experience that a vast majority of the lawyers of this state do that every day. I am so proud of my fellow bar members as I watch them skillfully present their cases in the court of law.

But I have to admit I have seen things happen in the courtroom that are far from what I would call professional conduct. I have seen attorneys engage in name-calling and bullying of other attorneys. I have seen attorneys who disrespect the rule of law when they present an argument to a judge, and I have seen judges fail to control their courtrooms when these activities occur.

One might ask why it matters that one may go too far in advocacy for their clients. Why, they may ask, is it wrong to do everything I can to help my client win their case? If one does not understand the answer to that question, perhaps this article will fall upon deaf ears.

It is important to remember the important role of judges in controlling these issues. The judges have many important roles in all stages of legal proceedings. The most important of which is to ensure that each party's rights are protected and that legal decorum is always present. Judges have a responsibility to control improper conduct in the courtroom.

American philosopher Aldo Leopold once wrote, "Ethical behavior is doing the right thing where no one else is watching – even when doing the wrong thing is legal." We as attorneys are expected to set a high bar when dealing with ethical issues. Cases should be decided based upon the facts of the case, not because someone was a better bully.

(continued on page 67)

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2023 Oklahoma Bar Association. Statements or opinions expressed in the *Oklahoma Bar Journal* are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors. Information about submissions can be found at www.okbar.org.

BAR CENTER STAFF

Janet K. Johnson, *Executive Director*; Gina L. Hendryx, *General Counsel*; Chris Brumit, *Director of Administration*; Jim Calloway, *Director of Management Assistance Program*; Beverly Petry Lewis, *Administrator MCLE Commission*; Gigi McCormick, *Director of Educational Programs*; Lori Rasmussen, *Director of Communications*; Richard Stevens, *Ethics Counsel*; Robbin Watson, *Director of Information Technology*; John Morris Williams, *Executive Director Emeritus*; Julie A. Bays, *Practice Management Advisor*; Loraine Dillinder Farabow, Jana Harris, Tracy Pierce Nester, Katherine Ogden, Steve Sullins, *Assistant General Counsels*

Barbara Acosta, Les Arnold, Gary Berger, Hailey Boyd, Jennifer Brumage, Craig Combs, Cheryl Corey, Nickie Day, Ben Douglas, Melody Florence, Johnny Marie Floyd, Matt Gayle, Emily Buchanan Hart, Suzi Hendrix, Jamie Jagosh, Debra Jenkins, Rhonda Langley, Durrel Lattimore, Brian Martin, Renee Montgomery, Lauren Rimmer, Tracy Sanders, Mark Schneidewent, Ben Stokes, Kurt Stoner, Krystal Willis, Laura Willis & Roberta Yarbrough

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

www.okbar.org

THE OKLAHOMA BAR
Journal

Volume 94 — No. 6 — August 2023

JOURNAL STAFF

JANET K. JOHNSON
Editor-in-Chief
janetj@okbar.org

LORI RASMUSSEN
Managing Editor
lorir@okbar.org

EMILY BUCHANAN HART
Assistant Editor
emilyh@okbar.org

LAUREN RIMMER
Advertising Manager
advertising@okbar.org

HAILEY BOYD
Communications Specialist
haileyb@okbar.org

BOARD OF EDITORS

MELISSA DELACERDA, Stillwater, Chair

AARON BUNDY, Tulsa

CASSANDRA L. COATS, Vinita

W. JASON HARTWIG, Clinton

JANA L. KNOTT, El Reno

MELANIE WILSON RUGHANI, Oklahoma City

SHEILA A. SOUTHARD, Ada

EVAN ANDREW TAYLOR, Norman

ROY TUCKER, Muskogee

DAVID E. YOUNGBLOOD, Atoka

OFFICERS & BOARD OF GOVERNORS

BRIAN T. HERMANSON, President, Ponca City; D. KENYON WILLIAMS JR., Vice President, Tulsa; MILES T. PRINGLE, President-Elect, Oklahoma City; JAMES R. HICKS, Immediate Past President, Tulsa; ANGELA AILLES BAHM, Oklahoma City; JOHN E. BARBUSH, Durant; S. SHEA BRACKEN, Edmond; DUSTIN E. CONNER, Enid; ALLYSON E. DOW, Norman; BENJAMIN R. HILFIGER, Muskogee; JANA L. KNOTT, El Reno; TIMOTHY L. ROGERS, Tulsa; KARA I. SMITH, Oklahoma City; NICHOLAS E. THURMAN, Ada; MICHAEL R. VANDERBURG, Ponca City; RICHARD D. WHITE JR., Tulsa; CAROLINE M. SHAFFER SIEX, Chairperson, OBA Young Lawyers Division, Tulsa

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

Subscriptions $75 per year. Law students registered with the OBA and senior members may subscribe for $40; all active members included in dues. Single copies: $4

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

Work From ~~Home~~ Anywhere: Ethical Considerations in the Post-Pandemic Era of Virtual Lawyering

By Paige A. Masters

IF THERE IS ONE THING THE COVID-19 PANDEMIC TAUGHT US, it was that people in many professions, ours included, could truly work from anywhere as long as they could access a *reasonably* reliable internet connection. For some, that might have been their kitchen table, the back porch, a makeshift office in a closet or, if they were lucky, a vacation home. Judging co-workers' office spaces on a videoconference became "a thing." My go-to was the front seat of my 2014 Jeep Grand Cherokee, sitting in my driveway because it was the one place I was pretty sure my potty-training toddler would not appear on a Zoom meeting wearing only his *PJ Masks* Pull-Up (or less) or serenade participants on a conference call with his rendition of the musical theme to *Paw Patrol*. It would not have gotten me a high score on the Twitter account Room Rater, but it did bring me some much-needed peace and quiet.

It comes as no surprise then that even as COVID restrictions have lifted, lawyers worldwide have, as Roy Strom of Bloomberg Law put it, "ma[de] the hop from their cushy offices to a brave, new world" of "'virtual,' 'hybrid,' or 'remote' firms."[1] According to Bloomberg's report in October 2022, "At least 10 law firms [we]re operating office-free or office-lite business models" that offered lower overhead and, thus, "partners a bigger cut of the revenue."[2] The Rules of Professional Conduct do not require that a lawyer has a "brick-and-mortar office."[3] The pandemic, though, did not halt, relax or bring about changes in the ethics rules. And with the shift in virtual lawyering comes ethical concerns. This article touches on a few of those, focusing primarily on the unauthorized practice of law while also briefly addressing duties of competence and confidentiality and supervising the work of subordinate attorneys and nonlawyers.

MULTI-JURISDICTIONAL ISSUES AND THE UNAUTHORIZED PRACTICE OF LAW

The risk of engaging in the unauthorized practice of law in a state in which an attorney is not licensed is a principal concern of a mobile virtual practice, for not only can attorneys find themselves in violation of the Rules of Professional Conduct, but they may also face criminal or civil liability.[4] Under Rule 5.5(b) of the Oklahoma Rules of Professional

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

Conduct, "A lawyer who is not admitted to practice in this jurisdiction shall not: (1) … establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."[5] "The definition of the practice of law is established by law and varies from one jurisdiction to another."[6] "Presence may be systematic and continuous *even if the lawyer is not physically present here*."[7] The purpose of the rule is to "protect[ ] the public against rendition of legal services by unqualified persons."[8]

Though not guaranteed, lawyers are probably safe to work remotely from a state in which they are not licensed as long as their work is related to matters pending in the state in which they are licensed, or they are providing legal services to residents of the state in which they are licensed. Nine months into the pandemic, the ABA Committee on Ethics and Professional Responsibility issued a formal opinion, opining that "[l]awyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted … if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction."[9] In doing so, the committee reasoned that protecting the public from unqualified practitioners – the purpose of Rule 5.5 – "is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed."[10] The committee stopped short of giving attorneys the green light, qualifying its opinion that such practice is only permitted *"if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law*."[11] While it does not appear an Oklahoma court or the Oklahoma Bar Association have addressed the issue, those states that have appear to be in agreement that remote practice alone does not raise concern. As the Utah State Bar recognized, "What interest does the Utah State Bar have in regulating an out-of-state lawyer's practice for out-of-state clients simply because he has a private home in Utah? And the answer is the same – none."[12]

But as with most conduct that implicates the unauthorized practice of law, what constitutes "the practice of law" is murky, and it is not hard to imagine a point at which an all-virtual practice could tread into unchartered waters unintentionally. The Oklahoma Supreme Court has declined to "define[ ] 'practice of law' to include specific acts," noting instead that its "decisions definitely spell out the concept of the practice of law" as "the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent."[13] "The 'distinction between law practice and that which is not,'" the court reasoned, "may be determined only from a consideration of the acts of service performed in each case."[14]

There can be little dispute that an attorney who drafts pleadings for a client is engaging in the practice of law.[15] The Oklahoma Supreme Court has concluded that attorneys who draft contracts or complete deeds[16] or negotiate a settlement agreement with an insurance company[17] are practicing law. But what about reviewing contracts? Analyzing and advising clients on routine legal issues? Or negotiating a debt? – all tasks that can be accomplished from afar.

Also up for debate is what is meant by a "systematic and continuous presence." The Utah State Bar Ethics Advisory Committee observed, "It seems clear that the out-of-state attorney who lives in Utah but continues to handle cases for clients from the state where the attorney is licensed has not established an office or 'other systematic and continuous presence for practicing law in [Utah] a jurisdiction in which the lawyer is not licensed.'" The sending of an email or two likely does not rise to that level either.[18] But what if an unlicensed lawyer's contacts with a state go beyond that?

A leading case on interstate practice was handed down by the California Supreme Court in 1998, and despite the changes in technology that have transformed the legal practice in the last 25 years, the opinion still informs the issues practitioners are grappling with today. In *Birbrower, Montalbano, Condon & Frank v. Superior Court*, the California Supreme Court found a New York-based firm engaged in the unauthorized practice of law[19] when its attorneys, who were not licensed in the state, represented a California client in California to negotiate a settlement and prepare for

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

The court observed that an attorney could still practice law in the state in violation of the unauthorized practice of law statute by 'advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means.'[32]

arbitration.[20] The case came to the court as a dispute over the firm's fee agreement with its client, ESQ Business Services Inc. (ESQ), which was a California corporation with its principal place of business in Santa Clara County.[21] The firm was engaged to represent it in a dispute against Tandem Computers Inc., a Delaware corporation related to software development and marketing.[22] The agreement between Tandem and ESQ provided that California law governed.[23]

In representing ESQ, the Birbrower attorneys "traveled to California on several occasions" and met with ESQ and its accountants there to "discuss[ ] … strategy for resolving the dispute" and make recommendations and give advice.[24] They also met with Tandem representatives "on four or five occasions" in California, demanding that Tandem pay ESQ millions of dollars.[25] In addition, firm attorneys traveled to California to interview potential arbitrators after they had filed a demand for arbitration with the San Francisco office of the American Arbitration Association.[26] They later returned to California to meet with ESQ, as well as Tandem attorneys, to discuss settlement and render legal advice to ESQ regarding the terms of the proposed settlement agreement.[27] The dispute eventually settled, but before it did, the firm modified its original fee arrangement from a contingency fee for one-third of all sums received by ESQ to a fixed fee, requiring ESQ to pay the firm over $1 million.[28]

On appeal, the California Supreme Court opined, "The practice of law 'in California' entails sufficient contact with the California client to render the nature of the legal service a clear legal representation."[29] "In addition to a quantitative analysis," the court observed, it "must consider the nature of the unlicensed lawyer's activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law 'in California.' The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations."[30]

To the California Supreme Court, physical presence is not determinative but only one factor to be considered.[31] The court observed that an attorney could still practice law in the state in violation of the unauthorized practice of law statute by "advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means."[32] Though it "decline[d] to provide a comprehensive list of what activities constitute[d] sufficient contact with the state," the court "reject[ed] the notion that a person automatically practices law 'in California' whenever that person practices California law anywhere, or 'virtually' enters the state by telephone, fax, e-mail, or satellite" – a finding the court suggested struck a balance "between interjurisdictional practice and the need to have a state-regulated bar."[33]

Applying these principles, the court found that its "'sufficient contact' definition of 'practice law in California' … [did not] excuse [the firm's] extensive practice in [the] state."[34] It declined to "craft an arbitration exception" to its unauthorized practice of law statute, as advocated by the firm, finding that was best left to the Legislature.[35] It likewise refused to adopt an exception to the law to address multistate relationships, for while recognizing the need in certain cases to accommodate the multistate nature of law practice, the facts showed the

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

firm's extensive activities within California went beyond any recognized exception to the statute.[36]

The *Birbrower* decision showed there is more at stake for attorneys violating unauthorized practice of law statutes than professional discipline. The court upheld, in part, the intermediate court's ruling that the fee agreement between ESQ and the firm was unenforceable, finding the lower court was correct in barring the firm from recovering fees generated under the agreement for unauthorized services performed in California.[37] The higher court disagreed with the intermediate court to the extent it implicitly barred the firm from recovering fees generated under the agreement for the limited legal services performed in New York to the extent they did not constitute the practice of law in California, even though services were performed for a California client.[38]

Applying *Birbrower* today, it likely matters very little whether the out-of-state attorney sets foot in a state in which they are not licensed. A handful of videoconferences or teleconferences in which the attorney discusses the strategy in resolving a dispute, gives legal advice or negotiates a settlement in another state may be considered more than just "fortuitous or attenuated" and rise to the level of "sufficient activities" to constitute the unauthorized practice of law. It remains to be seen, though, whether the answer would be different under even slightly different facts: for example, if the Oklahoma attorney is advising the out-of-state client on the application of Oklahoma law for a dispute pending in another state. That is the predicament presented by an issue that depends on a "consideration of the acts of service performed in each case."[39]

In practice, the application of Rule 5.5 and states' unauthorized practice of law statutes may lead to harsh results. Following *Birbrower*, the Minnesota Supreme Court refused to make an exception for an out-of-state *lawyer providing legal services to family members* who lived in Minnesota. Many of us would not think twice about helping a family member living in another state who turns to us for legal advice because we are the attorney in the family. The ability to practice law virtually makes that a more viable option.

The attorney, who was licensed in Colorado, was asked by his in-laws to assist them in negotiating a judgment entered against them in Minnesota for $2,368.13 in favor of their condo association.[40] The attorney sent a letter to the condo association's attorney informing him that he was representing his in-laws, and thereafter, the two attorneys exchanged approximately two dozen emails discussing the debtors' assets, ability to pay and potential for a foreclosure action.[41] At one point, the Colorado attorney attached financial disclosure forms to an email and made a settlement offer.[42] Early on in their communications, the condo association attorney asked the Colorado attorney whether he was licensed in Minnesota, and the attorney told him he was not.[43] He said that if he had to file a lawsuit, he would engage local counsel. In one of their final exchanges, the condo association's attorney asserted that the Colorado lawyer was engaging in the unauthorized practice of law, and the condo association later filed an ethics complaint.[44] Even after that, the attorney for the condo association sent additional emails to the attorney asking whether the settlement offer was still on the table.[45]

The director of the Office of Lawyers Professional Responsibility issued a private admonition to the Colorado attorney for engaging in the unauthorized practice of law, and a panel of the Lawyers Professional Responsibility board

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

affirmed.[46] The Colorado attorney appealed the decision to the Minnesota Supreme Court, arguing he did not run afoul of Minnesota's version of Rule 5.5 because he did not practice law *in* Minnesota.[47] The court disagreed:

> Appellant contacted D.R., a Minnesota lawyer, and stated that he represented Minnesota clients in a Minnesota legal dispute. This legal dispute was not interjurisdictional; instead, it involved only Minnesota residents and a debt arising from a judgment entered by a Minnesota court. Appellant instructed D.R. to refer all future correspondence to him, and he continued to engage in correspondence and negotiations with D.R. over the course of several months. Appellant requested and received financial documents from his Minnesota clients and advised them on their legal options. By multiple e-mails sent over several months, appellant advised Minnesota clients on Minnesota law in connection with a Minnesota legal dispute and attempted to negotiate a resolution of that dispute with a Minnesota attorney. *Appellant had a clear, ongoing attorney-client relationship with his Minnesota clients, and his contacts with Minnesota were not fortuitous or attenuated*. Thus, there is ample support for the Panel's finding that appellant practiced law in Minnesota.[48]

Thus, it matters not where the attorney is physically located when the services are performed. It matters, instead, where the clients are located and where the dispute arises. Had the attorney's in-laws' legal troubles had at least *some* connection to Colorado, the outcome may have been different.

Indeed, Rule 5.5 is not an absolute bar to interstate practice. It contains a safe harbor provision permitting a lawyer licensed in a U.S. jurisdiction who is not disbarred or suspended in a jurisdiction to provide legal services on a *temporary basis* in four specifically enumerated instances: when the services 1) "are undertaken in association with a lawyer who is admitted to practice in th[e] jurisdiction and who actively participates in the matter"; 2) "are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized"[49]; 3) "are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission"; or 4) "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice."[50] The list is not necessarily exhaustive. Comment 5 provides, "The fact that conduct is not so identified does not imply that the conduct is or is not authorized."[51] And, "There is no single test to determine whether a lawyer's services are provided on a 'temporary basis.' ... Services may be 'temporary' even though the lawyer provides services in a jurisdiction where not admitted on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation."[52]

The Ohio Board of Professional Conduct has opined that an "out-of-state lawyer who is admitted and in good standing in another United States jurisdiction may represent, on a temporary basis, an out-of-state lending institution concerning loans made to persons and entities in Ohio secured by real property in Ohio" without engaging in the unauthorized practice of law, pursuant to Rule 5.5.[53] This includes preparing loan documents, negotiating the terms of an agreement and attending the closing in Ohio.[54] In arriving at this opinion, the board reasoned that if "the out-of-state lawyer's services are provided to a current client, the transaction relates to the client's out-of-state business, and significant aspects of the work are conducted in the jurisdiction of licensure, then the representation is 'arising out of or are reasonably related' to his or her practice in the licensing jurisdiction." Furthermore, legal services typically required to complete a loan transaction are "usually of a short duration" and, thus, can be reasonably viewed as provided on a temporary basis.[55]

In the Minnesota disciplinary proceeding discussed, *supra*, the court took a narrow approach, refusing to find the "temporary basis" exception applied because, for one, the attorney knew further litigation was unlikely as a court had already entered judgment, so he was merely negotiating a debt resolution.[56] The court observed, "Rule 5.5(c)(2), by its plain language, requires more than an attorney's speculation that the

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

attorney can find local counsel and be admitted to practice pro hac vice," and there was no evidence the attorney took steps to associate counsel.[57] The court also rejected the attorney's argument that his services arose out of or were reasonably related to his practice in Colorado, as he primarily practiced environmental and personal injury law in Colorado, his in-laws were not Colorado residents, he had no prior attorney-client relationship with them and there was no connection between his in-laws' case and the state laws of Colorado.[58] Still, finding that the "nature of the misconduct in th[e] case was non-serious" and the only harm the in-laws suffered was a delay in resolving their debt, the court concluded a private admonition was appropriate.[59]

There is no clear answer as to the extent to which an Oklahoma attorney may operate a virtual practice and perform services for clients residing outside of the state or related to legal issues arguably arising beyond Oklahoma's border. The text and comments of Rule 5.5, the legal commentary analyzing it and *Birbrower* and its progeny teach us that providing legal services in a state where an attorney is not licensed can be done but only if limited in time and scope and only if those services relate to a court proceeding or arbitration pending in the attorney's state of licensure or the attorney's practice in a jurisdiction in which they are admitted. Keep in mind that, regardless of where misconduct occurs, a member of the OBA who engages in the unauthorized practice of law in another state is subject to discipline in Oklahoma.[60]

Attorneys practicing virtually must take care to ensure they are not, even unintentionally, holding themselves out as practicing in a state in which they are not licensed in violation of Rule 5.5(b). Some states have held that advertising legal services in a jurisdiction in which the lawyer is not licensed constitutes the unauthorized practice of law.[61] To avoid any confusion, all marketing materials – including the attorney's website, email signature and social media sites – should identify the states in which the attorney is licensed. The ABA has opined, "If the lawyer's website, letterhead, business cards, advertising, and the like clearly indicate the lawyer's jurisdictional limitations, do not provide an address in the local jurisdiction, and do not offer to provide legal services in the local jurisdiction, the lawyer has not 'held out' as prohibited by the rule."[62]

COMPETENCE AND CONFIDENTIALITY

It is axiomatic that lawyers who choose to practice virtually must do so competently, which means "keep[ing] abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.[63] The pandemic was a game changer, forcing some of us to embrace technology in ways we were not prepared. "You're on mute" became one of the most-uttered phrases of 2020. And we all felt for the Texas lawyer whose video went viral after he was trapped by a cat filter on a Zoom call while appearing virtually in court. He was nevertheless determined to proceed with the hearing, explaining to the judge that while he did not know how to remove the filter, he was there "live," and in case there was any doubt, "not a cat."[64]

As videoconferencing becomes more commonplace, the Rules of Professional Conduct arguably demand more of attorneys to adopt and adapt to the technology, even the tech averse.

A virtual law practice may also present more obstacles in protecting client information, including the risks of a cybersecurity attack.[65] The Rules of Professional Conduct impose upon attorneys only a duty to "make reasonable efforts" to prevent unauthorized disclosure of or access to client information and, in determining what is reasonable, take into account the costs of employing safeguards and difficulty implementing them, as well as the extent to which such safeguards interfere with the lawyer's ability to practice law.[66]

"As COVID-19 ravaged New York," the New York State Bar Association released an important alert "caution[ing] against storing or transferring client confidential data outside a firm's secure environment and on unapproved personal cloud service accounts or personal devices that are not secure, and encourag[ing] ensuring personal devices are segregated with separate passwords to restrict access by family members."[67] The bar also advised firms' IT departments to monitor remote access for irregularities, log network activity and perform random stress tests to detect any vulnerabilities.[68] These warnings remain relevant even as COVID-19 fears have lifted.[69] If anything, the rules require more measures to satisfy the "reasonable efforts" standard. When in doubt, attorneys should retain a consultant to make sure client information is being handled adequately.[70]

Videoconferencing platforms present their own concerns. The

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

ABA advises attorneys to "review the terms of service (and any updates to those terms) to ensure that using the virtual meeting or videoconferencing platform is consistent with the lawyer's ethical

obligations."[71] "When video conferencing with clients and colleagues, lawyers should manually check that Zoom is up-to-date, even if set to automatically update, use the waiting room feature to control participants, manage screen sharing options for video and audio, and use randomly generated meeting IDs and passwords transmitted by different means of communication, e.g., sending the meeting ID via email and the password via instant messaging."[72]

Working remotely raises confidentiality risks untethered to the technology itself as well. "Lawyers should be aware of their surroundings and avoid having confidential conversations around others."[73] Attorneys may run afoul of Rule 1.6 simply by having a phone conversation with a client within the earshot of a family member or sending an email from a coffee shop where a third party can view it over the attorney's shoulder. Even when the attorney is alone, devices like Amazon's Alexa may be present with the ability to record a private conversation.[74] When working remotely, it is further advisable to implement a "clean desk" or "clean screen" policy to secure documents and data when not in use so that they are not visible or audible to others.[75]

SUPERVISION OF OTHER LAWYERS AND NONLAWYERS

A virtual law practice, likewise, makes it more difficult to supervise less experienced lawyers and nonlawyer staff. The Rules of Professional Conduct require lawyers with managerial authority over other lawyers and nonlawyers to take reasonable steps to ensure there are measures in place to give assurance that the subordinate lawyers' and nonlawyers' conduct is compatible with the professional obligations of the lawyer.[76] A lawyer can be held responsible under the rules for another person's conduct if "(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."[77]

It is much easier for supervisory attorneys to fulfill these obligations if the colleagues they are supervising are right down the hall. "Whether via video conferencing, email, or phone calls, lawyers should stay connected to their staff and to other lawyers using the same tools they would use to stay connected with clients" and provide the necessary assistance and instruction concerning ethical aspects of their work.[78] Of particular concern is employees' use of their own devices to conduct firm business. The ABA counsels that "[i]f lawyers or nonlawyer assistants will be using their own devices to access, transmit, or sort client-related information," policies should be in place to "ensure that security is tight (e.g., strong passwords to the device and to any routers, access to VPN, updates installed, training or phishing attempts), that any lost or stolen device may be remotely wiped, that client-related information cannot be accessed by, for example, staff members' family or others, and that client-related information will be adequately and safely archived for later retrieval."[79]

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

CONCLUSION

For a profession often accused of being behind the times, the pandemic's remote work requirements ushered in a technological transformation that taught many of us what lawyers working virtually have known for years. The World Wide Web can make our jobs more efficient, convenient and flexible while expanding the universe of clients we can serve. Some attorneys at my firm have learned they prefer working from home and have adopted a more hybrid approach, gracing us with their presence at the office when they have an in-person meeting or court appearance. For the more introverted among us, the pandemic was a dream. While working from home in my pajamas was appealing at first, I discovered I crave working in the office where I can work collaboratively and bounce ideas off my colleagues. I am a smarter and better attorney thanks to the people with whom I work (and my SUV is more often than not full of fast-food crumbs and smells like sour milk). Plus, while the potty-training toddler is now 5, he has gained a potty-training 2-year-old brother with the same disposition for the ill-timed grand appearance. No matter where we choose to work, the future of law is virtual, and we must embrace it while heeding our ethical obligations under the Rules of Professional Conduct, which are often slow to keep pace with the changing times.

ABOUT THE AUTHOR

Paige Masters is a shareholder/director of Crowe & Dunlevy, where she is a member of the Commercial Litigation, Healthcare and Appellate practice groups and chairperson of the firm's Ethics Committee. Her legal practice is focused on complex commercial litigation, including insurance and healthcare litigation, as well as appellate work. Ms. Masters received her J.D. from the OCU School of Law, where she was editor-in-chief of the *Oklahoma City University Law Review*.

ENDNOTES

1. Roy Strom, "Covid Propelled Office-Free Law Firms to 1,000-Lawyer Movement," Bloomberg Law (Oct. 27, 2022, 4:30 a.m.), https://bit.ly/3NrKc76.
2. *Id.*
3. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).
4. *See, e.g.,* Conn. Gen. Stat. §51-88(b)(1) ("Any person who violates any provision of this section shall be guilty of a class D felony, except that in any prosecution under this section, if the defendant proves by a preponderance of the evidence that the defendant committed the proscribed act or acts while admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and while a member in good standing of such bar, such defendant shall be guilty of a class C misdemeanor."); Cal. Bus. & Prof. Code §6126 ("Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment.").
5. Okla. Rules of Prof'l Conduct R. 5.5(b)(1)-(2).
6. Okla. Rules of Prof'l Conduct R. 5.5 cmt. 2.
7. Okla. Rules of Prof'l Conduct R. 5.5 cmt. 4 (emphasis added).
8. Okla. Rules of Prof'l Conduct R. 5.5 cmt. 2.
9. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 495 (2020) (emphasis added).
10. *Id.*
11. *Id.*
12. Utah State Bar, Ethics Op. 19-03 (2019); Maine Prof'l Ethics Comm., Op. 189 (2005) ("Where the lawyer's practice is located in another state and where the lawyer is working on office matters from afar, we would conclude that the lawyer is not engaged in the unauthorized practice of law. We would reach the same conclusion with respect to a lawyer who lived in Maine and worked out of his or her home for the benefit of a law firm and clients located in some other jurisdiction."); *Ethical considerations – Unauthorized Practice of Law*, 2 Successful Partnering Between Inside and Outside Counsel §26:33 (citing cases and advising that "[a]lthough most jurisdictions have not deemed remote, virtual practice by a lawyer physically present in a jurisdiction where that lawyer is not admitted as the unauthorized practice of law during the COVID-19 pandemic, as COVID restrictions are eliminated, lawyers who are involved in legal outsourcing and engage in remote, virtual practice should monitor the Rules of Professional Conduct of the jurisdiction in which they are physically present, and in which that lawyer is licensed, to ensure compliance with Rule 5.5.").
13. *R. J. Edwards, Inc. v. Hert*, 1972 OK 151, ¶20, 504 P.2d 407, 416.
14. 1972 OK 151, ¶23, 504 P.2d at 416 (citation omitted).
15. *State ex rel. Oklahoma Bar Ass'n v. Wolfe*, 1997 OK 47, 937 P.2d 988.
16. *Houts v. State ex rel. Oklahoma Bar Ass'n*, 1971 OK 62, ¶¶11, 13, 14, 486 P.2d 722, 724-25.
17. *State ex. rel. Oklahoma Bar Ass'n v. Downing*, 1993 OK 44, ¶5, 863 P.2d 1111, 1113. *See also R.J. Edwards*, 1972 OK 151, ¶23, 504 P.2d at 417 ("a layman who evaluates a claim, and undertakes to settle it, based upon applicable legal principles, is practicing law").
18. *See Nat'l Funding, Inc. v. Com. Credit Counseling Servs., Inc.*, 817 F. App'x 380, 385 (9th Cir. 2020).
19. In California, it is a misdemeanor to practice law when one is not a member of the state bar. Cal. Bus. & Prof. Code §§6125, 6126.
20. *Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 949 P.2d 1, 2 (Cal. 1998), as modified (Feb. 25, 1998). Similar to Oklahoma, California defines "practice of law" as "the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure," which California courts have found includes "legal advice and legal instrument contract preparation, whether or not these subjects were rendered in the course of litigation." *Id.* at 5 (internal quotation marks and citation omitted).
21. *See id.*
22. *Id.*
23. *Id.*
24. *Id.* at 3.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.* at 4.
29. *Id.* at 5.
30. *Id.*
31. *Id.*
32. *Id.* at 5-6.
33. *Id.* at 6. In doing so, the court recognized that "[i]n furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice." (internal quotations and citation omitted). The dissent argued

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

for a more liberal approach and more narrow definition of the practice of law "as the representation of another in a judicial proceeding or an activity requiring the application of that degree of legal knowledge and technique possessed only by a trained legal mind." *Id.* at 13.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 10. "It is a general rule that an attorney is barred from recovering compensation for services rendered in another state where the attorney was not admitted to the bar." *Id.* The court refused to make an exception to the general rule of nonrecovery for in-state services if the out-of-state attorney discloses to his client he lacks a local license, noting that it disagreed with the Idaho Supreme Court that allowed an Oklahoma attorney to recover for services rendered in Idaho probate court because the attorney had not falsely represented himself as being licensed in Idaho in *Freeling v. Tucker*, 289 P.85 (Idaho 1930). *Id.*

38. *Id.* at 11. *See also Koscove v. Bolte*, 30 P.3d 784, 786-87 (Colo. App. 2011) (finding lawyer engaged in unauthorized practice of law by analyzing lease with oil company and giving client opinion on its meaning, expressing opinions about legal theories for recovery of damages, communicating with oil company and assisting in contemplated lawsuit); *Cleveland Bar Ass'n v. Moore*, 722 N.E.2d 514, 515 (Ohio 2000) ("A lawyer admitted to practice in another state, but not authorized to practice in Ohio, who counsels Ohio clients on Ohio law and drafts legal documents for them is engaged in the unauthorized practice of law in Ohio.").

39. *R.J. Edwards*, 1972 OK 151, ¶23, 504 P.2d at 416.

40. *In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661, 664 (Minn. 2016).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 665.

47. *Id.*

48. *Id.* at 666 (emphasis added).

49. This would include meeting with clients, interviewing potential witnesses, reviewing documents and taking depositions. Okla. Rules of Prof'l Conduct R. 5.5 cmt 10.

50. Okla. Rules of Prof'l Conduct R. 5.5(c)(1)-(4). A "variety of factors" are to be considered in determining whether "services arise out of" or are "reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted." "The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law." Okla. Rules of Prof'l Conduct R. 5.5 cmt. 14.

51. Okla. Rules of Prof'l Conduct R. 5.5 cmt. 5.

52. Okla. Rules of Prof'l Conduct R. 5.5 cmt. 6.

53. Ohio Bd. of Prof'l Conduct, Formal Op. 2018-2 (2018).

54. *Id.*

55. *Id.*

56. *In re Charges of Unprofessional Conduct*, 884 N.W.2d at 667.

57. *Id.*

58. *Id.* at 668.

59. *Id.* at 669. Three judges dissented, urging they "would conclude that appellant's assistance with a small judgment-collection negotiation for his parents-in-law, including the emails to D.R., were 'reasonably related' to appellant's practice in Colorado, which satisfies Rule 5.5(c)(4). The 'reasonably related' exception in Rule 5.5(c)(4) is a broad, catch-all exception that is intended to exempt circumstances such as those presented here. Moreover, the familial connection between appellant and his in-laws, and the fact that they contacted appellant in Colorado for assistance, should be an additional consideration that supports a finding that the matter was 'reasonably related' to his practice in Colorado under Rule 5.5(c)(4)." *In re Charges of Unprofessional Conduct*, 884 N.W.2d at 670 (Anderson, J, dissenting).

60. Okla. Rules of Prof'l Conduct R. 8.5(a). *See also State ex rel. Oklahoma Bar Ass'n v. Auer*, 2016 OK 75, ¶22, 376 P.3d 243, 250 (ordering that Oklahoma lawyer should be disbarred for engaging in unauthorized practice of law in Colorado by holding himself out as a licensed attorney in Colorado, establishing multiple offices, drafting legal documents and offering legal advice to clients).

61. *In re Amendments to Rules Regulating the Florida Bar*, 108 So.3d 609, 617 (Fla. 2013) ("A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law."); *Fla. Bar v. Kaiser*, 397 So.2d 1132, 1134 (Fla. 1981) (concluding that attorney's advertisements in telephone books, on television and in newspapers of his availability as an attorney, with the implication that he was authorized to practice law in the state, constituted the unauthorized practice of law); *Haymond v. State Grievance Comm.*, 723 A.2d 821 (Conn. Super. Ct. 1997) (finding attorney licensed only in Connecticut and Pennsylvania engaged in the unauthorized practice of law by placing ad in Yellow Pages in Massachusetts because "advertising legal services [wa]s expressly including within the practice of law" under Connecticut statute); *In re Williamson*, 838 So.2d 226, 235-36 (Miss. 2002) (determining that out-of-state attorney engaged in the practice of law in part by soliciting cases via a 1-800 number advertised in Mississippi through television commercials among other, more direct, actions). For more on advertising issues posed by internet and social media sites, *see* Timila S. Rother and Paige A. Masters, "Lawyers Being Social: Ethical Implications of Personal Social Media Sites," 87 *Okla. B.J.* 2503, 2016.

62. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

63. Okla. Rules of Prof'l Conduct R. 1.1 cmt. 8.

64. "Lawyer accidentally appears as cat in virtual court case," CNN.com, *available at* https://bit.ly/43153Uf (last visited May 29, 2023.) "Zoom Cat Lawyer, also known as I'm Not a Cat," now has his own Wikipedia page, https://bit.ly/3pgyMuU.

65. Okla. Rules of Prof'l Conduct R. 1.6(c) ("A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.").

66. Okla. Rules of Prof'l Conduct R. 1.6(c) cmt. 16.

67. Devika Kewalramani *et al.*, "Social Distance Lawyering: How Close Is Your Ethical Compliance?" 92 *N.Y. St. B.J.* 35, 36 (2020).

68. *Id.*

69. Attorneys using videoconferencing platforms should "recognize the importance of using a [ ] provider that implements appropriate securities measures, and carefully review and comprehend the terms of use and service agreement." *Id.* at 36-37. "[W]hen video conferencing with clients and colleagues, lawyers should manually check that Zoom is up-to-date, even if set to automatically update, use the waiting room feature to control participants, manage screen sharing options for video and audio, and use randomly generated meeting IDs and passwords transmitted by different means of communication, e.g., sending the meeting ID via email and the password via instant messaging." *Id.* at 37.

70. For more on the ethics of using technology in the post-COVID era, *see* Danielle M. Hall, "Ethically Using Technology in the Era of COVID-19: A Catalyst for Innovation and Flexibility," 90 *J. Kan. B.A.* 29 (2021).

71. ABA Standing Comm. On Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

72. Kewalramani, *supra* note 67, at 37.

73. *Id.* at 37.

74. *Id.*

75. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

76. Okla. Rules of Prof'l Conduct R. 5.3(a)-(b).

77. Okla. Rules of Prof'l Conduct R. 5.3(c).

78. Kewalramani, *supra* note 67, at 37-38.

79. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

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

A Lesson From *Seinfeld*: How Generative AI Issues Remind Us to Be True to Our Oaths

By Jandra Cox

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

ONE OF THE LOWLIGHTS OF A LAWYER'S LEGAL CAREER IS WHAT ONE CAN CALL, for ease of reference, an "online research fail." While attorneys have come to trust the robust and accurate flagging system of online research tools to warn us if a case has been overturned or even called into question by another authority, online databases occasionally miss one, and we offer the case to the court as "good law," only to discover the case has been overturned. It happens even to the most careful lawyers.

Clearly, traditional databases are not infallible, just as humans are not infallible. And yet, members of the bar association have come to rely on Westlaw, LexisNexis, the Oklahoma Supreme Court Network (OSCN) and other databases to streamline the time commitment it takes to find law. There are only so many hours in a day, many of which we need to save for drafting briefs that cite those cases. Briefs won't write themselves.

Or will they?

WHAT IS GENERATIVE ARTIFICIAL INTELLIGENCE?

Enter generative artificial intelligence. "The term 'artificial intelligence' means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments."[1] Generative artificial intelligence "learns how to take actions from past data" and "creates brand new content – a text, an image, even computer code – based on that training, instead of simply categorizing or identifying data like other AI."[2]

AI is not yet sentient, but you can imagine the uses in law, many of which have been around for years (like online natural-language/Boolean searches and predictive coding in electronic discovery) and many of which are winging their way into our legal lives *now*, like AI-generated legal briefing.

GENERATIVE ARTIFICIAL INTELLIGENCE IN LEGAL BRIEF WRITING

Many lawyers are not great writers, so it is not surprising that some practitioners have resorted to generative AI to write legal briefs. While AI cannot write like, say, F. Scott Fitzgerald, perhaps one day it will. It is already arguably better than what we see turned out of some law firms on a regular basis. Consider this excerpt by Mr. Fitzgerald:

> This unlikely story begins on a sea that was a blue dream, as colorful as blue silk stockings, and beneath a sky as blue as the irises of children's eyes. From the western half of the sky the sun was shying little golden disks at the sea – if you gazed intently

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

> enough you could see them skip from wave tip to wave tip until they joined a broad collar of golden coin that was collecting half a mile out and would eventually be a dazzling sunset.[3]

When I asked AI to write something about a "dazzling sunset and blue ocean," it wrote:

> As I stood on the beach, the sky was painted with a stunning array of colors. The sun slowly sank below the horizon, casting a warm glow across the sky. The ocean was a deep shade of blue, and the waves gently lapped at the shore. It was a moment of pure serenity, and I felt completely at peace in the midst of such natural beauty. The dazzling sunset and blue ocean were a perfect reminder of the beauty that surrounds us every day.[4]

Mr. Fitzgerald's prose is a good example for us to consider because the best legal writing contains an element of poetry. Consider this poetic quote by United States Supreme Court Associate Justice Louis Brandeis:

> Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.[5]

When asked to compose a quote about exposing wrongdoing, AI suggested:

> When we expose wrongdoing, we not only hold those responsible accountable, but we also pave the way for a more just and honest society.[6]

Generative AI is not Mr. Fitzgerald or Justice Brandeis, but it is not bad, and one can see why attorneys are tempted to use it. AI is able to clean up the woefully inadequate syntax, grammar, sentence structure and the mother of all failings, logical flow, in legal briefs. Moreover, AI does not ask for vacation days or 401(k) contributions.

GENERATIVE ARTIFICIAL INTELLIGENCE WITH CATASTROPHIC CONSEQUENCES

Although using AI may be more affordable than hiring a brief writer, it is not *always* so, however. Consider its catastrophic cost in a case in New York, wherein a lawyer submitted a brief that cited *phony* cases (generated by ChatGPT) and was, as a result, publicly exposed and *monetarily sanctioned* for offering the court fake "law."[7] Not surprisingly, that lawyer "greatly regrets" using AI, citing his surprise that generative AI could create false content.[8]

Problematic AI is likely to rear its ugly head with more regularity in the coming days. Scholars and practitioners are already sounding alarm bells regarding AI's creation of ethical dilemmas for lawyers, citing potential violations of our duties of competence, diligence and supervision.[9] Was the New York lawyer who offered bogus cases competent? Diligent? That would be a hard case to make. Did he "supervise" the drafting properly? No, AI had free reign here. Certainly, nothing about his submission adhered to standard duties of candor toward the tribunal or the offering of meritorious claims and contentions.

AI may also compromise our duties of confidentiality and privilege. Consider that ChatGPT contains a warning that "[c]onversations may be reviewed by our AI trainers to improve our systems."[10] ("Conversations" is what generative AI creations are called and how they are cited.) Do we breach client confidence if AI trainers are effectively listening in? Who are those people?

Some contend that using AI may constitute the unauthorized practice of law,[11] and some warn the use of AI may also potentially violate goals the bar association has collectively agreed are worth protecting, like diversity and inclusion.[12] AI looks for patterns in large data pools. The "training" of AI is "a statistical process" and "will have biases," says Dr. Tonya Custis, a research director at Thomson Reuters who leads a team of research scientists developing natural language and search technologies for legal research.[13] "AI requires data – data about actions and decisions made by humans," explains David Curle, director of the technology and innovation platform at the Legal Executive Institute of Thomson Reuters.[14] "If you have a system that's reliant on hundreds of thousands or millions of human decisions, and those humans had biases, there's a risk that the same bias will occur in the AI."[15] As an example relevant to the legal world, David Lat, founder of Above the Law, says, "In the judicial system, one prominent example is judges making sentencing decisions based in part on AI-driven software that claims to predict recidivism, the likelihood of committing further crimes. There is concern over how the factors used in the algorithms of such software could correlate

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

with race, which judges are not allowed to take into account when sentencing."[16] Mr. Lat suggests we all 1) reconsider using generative AI, 2) remove privileged content in our drafts before asking AI to peek in and 3) "mask" or "fake" our input, such as using fake client names, until you ask AI to leave the party.[17]

ONE COURT'S SOLUTION

Most jurisdictions are scurrying to even *understand* the perils of AI and, therefore, have certainly not adequately addressed AI's use in their courthouses. One exception is District Judge Brantley Starr, U.S. District Court for the Northern District of Texas, Dallas Division, who has attempted to stave off AI brief writing disasters in the Northern District of Texas by recently issuing a "judge specific requirement" for all litigants practicing before him to certify in writing that they did not have artificial intelligence programs draft filings submitted to him without ensuring their accuracy.[18] Judge Starr's "Mandatory Certification Regarding Generative Artificial Intelligence" provides:

> All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being. These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents and anticipated questions at oral argument. But legal briefing is not one of them. Here's why: these platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up – even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor or justice, such programs act according to computer code rather than conviction, based on programming rather than principle. Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court's judge-specific requirements and understand that they will be held responsible under Rule 11 for the contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing. A template Certificate Regarding Judge-Specific Requirements is provided here.[19]

Most jurisdictions are scurrying to even *understand* the perils of AI and, therefore, have certainly not adequately addressed AI's use in their courthouses.

In addition to a sweeping attestation that "I, the undersigned attorney, hereby certify that I have read and will comply with all judge-specific requirements for Judge Brantley Starr, U.S. District Judge for the Northern District of Texas," Judge Starr's template suggests that each attorney attest, "I further certify that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence – including quotations,

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

citations, paraphrased assertions, and legal analysis – will be checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the Court. I understand that any attorney who signs any filing in this case will be held responsible for the contents thereof according to Federal Rule of Civil Procedure 11, regardless of whether generative artificial intelligence drafted any portion of that filing."[20]

When interviewed about his new requirement, Judge Starr explained, "We're at least putting lawyers on notice, who might not otherwise be on notice, that they can't just trust those databases. They've got to actually verify it themselves through a traditional database."[21]

A traditional database – *like our current online tools* – which have failed us all.

Or checked by "a human being" – *like all of us* – who are known to miss things, too.

A WIDER PROBLEM

Judge Starr's premise is that generative AI should not be trusted because it is "prone to hallucinations and bias." Some might respond that hallucinations and bias are not an AI-specific problem but can also be characteristics of people with an agenda, like litigants and those paid to represent them. Judge Starr insists that human drafting, or at least double-checking, is preferable to AI-generated briefing because attorneys "swear an oath to set aside their personal prejudices, biases and beliefs to faithfully uphold the law." One may question whether that is the oath of lawyers, although that *is* the oath of judges. Lawyers, on the other hand, are advocates who swear oaths of zealous representation, which is *supposed to be* tempered by duty, honor, truth and justice.

Judge Starr further opines that AI programs are "[u]nbound by any sense of duty, honor or justice" and "act according to computer code rather than conviction, based on programming rather than principle." True enough, but that implies attorneys are always bound by duty, honor and justice and act according to conviction. Although our ethics code mandates that we act with honor and conviction in the pursuit of justice,[22] we are witnessing more and more often these days that the oath and the mandate are not backed by the important part – the actual *doing it* part. To misquote Jerry Seinfeld: "See, you know

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

how to take the [oath], you just don't know how to hold the [oath] and that's really the most important part of the [oath], the holding. Anybody can just take them."[23]

In essence, what we are seeing is that artificial intelligence, created by people, also *mimics* people – not just in intellect but also in our infirmities, including dishonesty and, perhaps, laziness. Clearly, generative AI is problematic, and we will have to navigate its complex and thorny path with care – and quickly. But perhaps while we are inspecting AI's "behavior," we should inspect our *own*. In accordance with our ethical duties, are we "consistent with requirements of honest dealing with others?"[24] Or are we trying to win a game? Are we "us[ing] the law's procedures only for legitimate purposes and not to harass or intimidate others?"[25] Or are we trying to earn money however we can? Do we strive to "uphold legal process," even when we must "challenge the rectitude of official action?"[26] Or are we cutting corners because we think no one is watching? Are we "work[ing] to strengthen legal education?"[27] Or are we pulling the ladder up behind us? Are we "mindful of deficiencies in the administration of justice and of the fact that the poor … cannot afford legal assistance," and are we therefore "devot[ing] professional time or resources to ensure equal access to our system of justice?"[28] Or not? Let us be people of honor, not just in how we use AI but in how we practice law. This is a good time to examine ourselves, as well as the tools at our disposal.

ABOUT THE AUTHOR

Jandra Cox has practiced law in Tulsa and Oklahoma City since receiving her J.D. from the OU College of Law. In addition to representing her own clients, she has researched and ghostwritten for dozens of Oklahoma lawyers. She is an adjunct instructor at Southeastern Oklahoma State University, teaching undergraduate and graduate law classes in Oklahoma City.

ENDNOTES

1. National Artificial Intelligence Act of 2020 (DIVISION E, SEC. 5001, effective Jan. 1, 2021).
2. Jeffrey Dastin, Akash Sriram, Saumyadeb Chakrabarty, "Explainer: What is Generative AI, the technology behind OpenAI's ChatGPT?" (March 17, 2023) https://bit.ly/3NJK9DA.
3. F. Scott Fitzgerald, "The Offshore Pirate" (1920).
4. Grammarly, personal communication, June 2, 2023.
5. Louis D. Brandeis, *Harper's Weekly* Dec. 20, 1913, Chapter V: What Publicity Can Do.
6. Grammarly, personal communication, June 3, 2023.
7. Benjamin Weiser, "ChatGPT Lawyers Are Ordered to Consider Seeking Forgiveness" (June 22, 2023) https://bit.ly/3pBEhV2.
8. Jacqueline Thomsen, "US Judge Orders Lawyers to Sign AI Pledge, Warning Chatbots 'Make Stuff Up'" (June 2, 2023) https://bit.ly/3XN6ftx.
9. *See, e.g.*, Nicole Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands," *Georgetown Journal of Legal Ethics* Vol. 33:877; Nicholas Boyd, "Do Professional Ethics Rules Allow You to Have a Robot Write Your Brief?" (March 21, 2023) https://bit.ly/3CZUCGf.
10. Lance Eliot, "Is Generative AI Such As ChatGPT Going To Undermine The Famed Attorney-Client Privilege, Frets AI Law And AI Ethics" (March 30, 2023) https://bit.ly/44buTXd.
11. *See, e.g.*, Nicole Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands," *Georgetown Journal of Legal Ethics* Vol. 33:877; Thomas Spahn, "Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law?" 24 *Rich J.L. & Tech.*, no. 4, 2018.
12. Rebekah Hanley, "Ethical Copying in the Artificial Intelligence Authorship Era: Promoting Client Interests and Enhancing Access to Justice," *Legal Writing Journal*, Vol. 26, Issue 2, 2022 (June 15, 2022). https://bit.ly/3PEACjU; David Lat, "The Ethical Implications of Artificial Intelligence," Above The Law 2020, https://bit.ly/3O3diew.
13. David Lat, "The Ethical Implications of Artificial Intelligence," Above The Law 2020, https://bit.ly/3O3diew.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. Jacqueline Thomsen, "US Judge Orders Lawyers to Sign AI Pledge, Warning Chatbots 'Make Stuff Up,'" (June 2, 2023) https://bit.ly/3XN6ftx.
19. https://bit.ly/44bDZTD.
20. *Id.*
21. Jacqueline Thomsen, "US Judge Orders Lawyers to Sign AI Pledge, Warning Chatbots 'Make Stuff Up,'" (June 2, 2023) https://bit.ly/3XN6ftx.
22. OK ST RPC Preamble.
23. https://bit.ly/3NZL4kC.
24. OK ST RPC Preamble.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*

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

Judges on Social Media

How Judges Navigate Their Use of Social Media

By Judge Thad Balkman

JUDGES, LIKE MOST OTHER PEOPLE, join and use social media platforms to share memories and photos, keep up with the news and generally stay connected with others. Given the solitary nature of the profession, many judges enjoy interacting with others through Facebook, Instagram, Snapchat, Twitter, LinkedIn and other platforms. Social media, particularly Facebook, can also be a useful tool for campaigning. Judges' use of social media for their campaigns will be addressed further below. I recently conducted a short survey of all district court and appellate judges in Oklahoma and found that more than 75% of judges who responded have some type of social media account, where Facebook is the most common and is used by about 70%.[1] Many of those judges who use social media reported feeling it is a way for them to connect with others and combat feelings of isolation.

As depicted in the 2011 Academy Award for Best Picture nominee, *The Social Network*, Facebook has evolved from its early days as an online photo directory used by college students at Harvard University to "judge attractiveness of fellow students" to a social network of just under three billion users, the largest social network in the world.[2] Today, Facebook is commonly used by churches, schools and numerous other groups and organizations to post announcements; Facebook is used by businesses to promote sales and has a marketplace for online sales by businesses and individuals; Facebook serves as a master calendar to help its users keep track of birthdays, anniversaries and community events; Facebook Messenger is used for direct communications between friends; and Facebook functions as a news source similar to Twitter, TikTok and other social media platforms.

Judges who are most active on social media, like lawyers and most other social media users, derive satisfaction and joy from sharing content like their children's accomplishments, travel adventures or maybe even pictures of their gourmet dinners with other users. However, many Oklahoma judges with social media accounts reported they are passive users and rarely, if ever, post any content and refrain from leaving comments or likes, choosing instead to restrict their use to reading others' posts and the occasional "Happy Birthday" greeting.[3]

2011 JUDICIAL ETHICS ADVISORY PANEL OPINION

The limited social media participation by Oklahoma judges may be attributed to a 2011 opinion by the Oklahoma Judicial Ethics Advisory Panel. The three-member panel unanimously agreed that the use of social media sites by judges is "fraught with peril."[4] They acknowledged that a judge may "hold an internet social account, such as Facebook, Twitter, or LinkedIn without violating the Code of Judicial Conduct" but placed restrictions on such use.[5] The panel's opinion places restrictions on judges' social media "friends." Presumably,

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

Stanisic Vladimir - stock.adobe.com

these restrictions would apply to "friends" on Facebook, "followers" on Instagram and Twitter, as well as any other connections on various social media platforms. The panel opined that a social media account of a judge can only include "'friends' ... who do[ ] not regularly appear in the Judge's court."[6] This would exclude any "law enforcement officers, social workers, attorneys and others who may appear in his or her court" from this "friends" list.[7]

The panel cited similar judicial ethics opinions reached in other states, including New York, Florida, South Carolina, Kentucky and Ohio, that found an inherent conflict between a judge's use of social media and their judicial duties. The panel's reasoning for its strict limitation is based on the belief that judges should have minimal interaction with social media to avoid an appearance of impropriety. The panel, referring to the preamble of the Oklahoma Code of Judicial Conduct, stated that judges have a duty to "maintain the dignity of judicial office at all times, avoid impropriety and the appearance of impropriety in their professional and personal lives, and to ensure the greatest

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

public confidence in their independence, impartiality, integrity and competence."[8]

The panel articulated a test for the appearance of impropriety rooted in Canon 1, Rule 214(C) for determining whether a judge's use of social media violates the Judicial Code of Conduct. That rule stated, "A Judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the Judge."[9] "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the Judge violated this code or engaged in other conduct that reflects adversely on the Judge's honesty, impartiality, temperament, or fitness to serve as a Judge."[10]

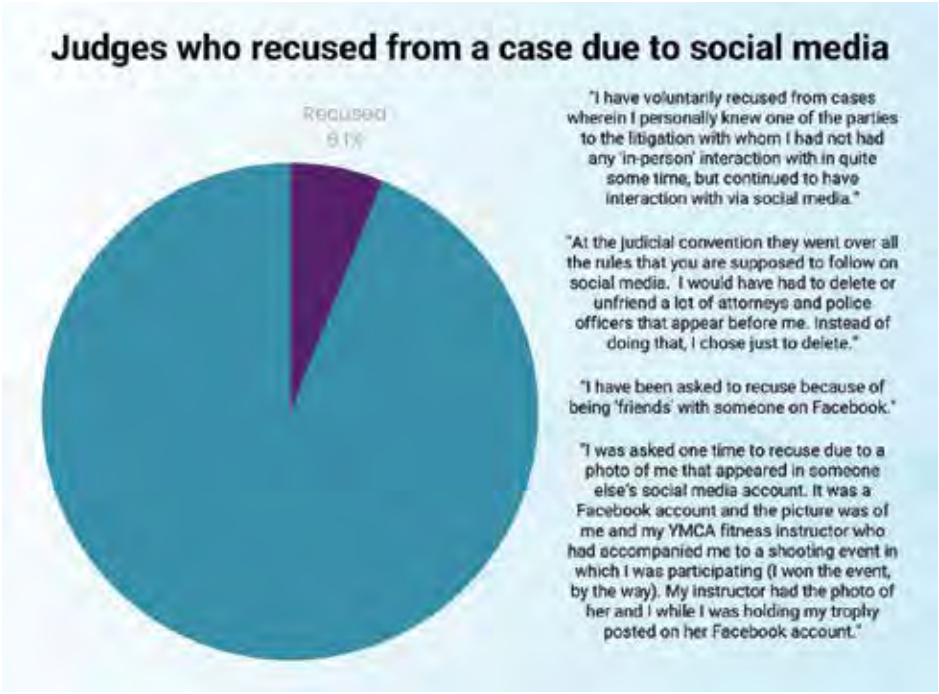
The Oklahoma Supreme Court has adopted the more stringent approach articulated by the panel in decisions disqualifying judges who were "friends" with a litigant or attorney on Facebook. For example, a judge presiding over a divorce case was asked to be recused by one of the parties because the judge was a Facebook friend of the complaining party's spouse. The trial court denied the motion to disqualify the judge, finding that the judge and the litigant were not actually friends. The judge had thousands of Facebook friends and accepted all Facebook friend requests. Using the impropriety test, the trial court found that an objective observer would not reasonably question the judge's impartiality because the judge and the litigant's spouse had a Facebook friendship; that relationship alone was not close enough to influence the judge's ability to remain impartial. The Oklahoma Supreme Court disqualified the judge in an unpublished decision.[11]

EVOLVING SOCIAL MEDIA STANDARDS IN OTHER STATES

The stringent social media policy adopted in Oklahoma is based on decisions in other states, including Florida's Judicial Ethics Advisory Opinion 2009-20 that "prohibits a Judge from adding lawyers who appear in the Judge's court as 'friends' ... as being violative of the canon."[12] The panel extended the restriction to "social workers, law enforcement officers, or others who regularly appear in court in an adversarial role."[13] One notable difference is in Florida's opinion court: Staff were prohibited to be added as "friends," and Oklahoma's does not extend that prohibition.[14]

However, that Florida opinion was subsequently reversed in 2018 by the Florida Supreme Court. The case involved a party to a lawsuit who sought a judge's disqualification based on her Facebook friendship with an attorney who represented a potential party in the pending litigation. The trial court denied the motion to disqualify, and on appeal, the 3rd District Court of Appeal found that a Facebook friendship alone does not prove a close relationship between the parties and, as a result, affirmed the trial court's decision to deny the motion. This decision caused a split in Florida's District Courts of Appeal, so the Florida Supreme Court reviewed the issue in *Law Offices of Herssein and Herssein, P.A. v. United Services Automobile Association*.[15]

The Florida Supreme Court upheld the decision of the 3rd District Court of Appeal to deny the disqualification motion and rejected the Florida Judicial Ethics Advisory Opinion Committee's bright-line rule of disqualification. The Florida Supreme Court went as far as to criticize the committee for misunderstanding the "intrinsic nature of Facebook 'friendship'" and placing too much focus on a Facebook "friendship" without considering other factors in evaluating the relationship between a judge and attorney or litigant.[16]



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

The court agreed with the intermediate appellate court's findings that judges may have hundreds of Facebook friends, ranging from old high school classmates to close, present-day friends, and "Facebook members often cannot recall every person they have accepted as 'friends' or who have accepted them as 'friends.'"[17] The Supreme Court concluded, "No reasonably prudent person would fear that she could not receive a fair and impartial trial based solely on the fact that a judge and attorney appearing before the judge are Facebook 'friends' with a relationship of indeterminate nature."[18] The court noted that just as there are different degrees of traditional friendships varying in closeness, "the establishment of a Facebook 'friendship' does not objectively signal the existence of the affection and esteem involved in a traditional 'friendship.'"[19] In the context of a motion for disqualification, unless there are specific facts tending to show a particular friendship is close in nature, "the mere existence of a Facebook 'friendship,' in and of itself, does not inherently reveal the degree or intensity of the relationship between the Facebook 'friends.'"[20] The Florida decision is consistent with the majority of states that recognize that not all social media connections signify a close relationship.[21]

Oklahoma's rule discouraging judges from using Facebook is presently shared by a minority of other states.[22] The majority of states reject a bright-line rule of disqualification based solely on the existence of a friendship or virtual connection. Instead, they take a more permissive approach to judges using social media; judges may use social media but are encouraged to disclose to the litigants if they are friends or have some other social media relationship that is reasonably relevant to a possible motion for disqualification. Because these "interpersonal relationships are varied, fact-dependent, and unique to the individuals involved[,] ... judges [ ] ultimately must determine the nature of their own specific relationships with particular individuals and their ethical obligations resulting from those relationships."[23] This approach recognizes that there is nothing inherently inappropriate about a judge making use of a social network. However, even in states with much more lenient opinions on the use of social media by judges, advisory panels and courts recommend that judges exercise caution and avoid social media connections that may create an appearance of bias or impropriety.

CODE OF JUDICIAL CONDUCT OKLAHOMA RULE 2.11

Oklahoma's Code of Judicial Conduct contains canons and rules that should guide a judge in determining what is appropriate use of social media. The preamble states, "Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system."[24]

For this reason, the Code of Judicial Conduct requires judges to "uphold and promote the independence, integrity, and impartiality of the judiciary" and "avoid impropriety and the appearance of impropriety."[25] And pursuant to Rule 2.11 of the code, a judge is required to disqualify "himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including cases where the "judge has a personal bias or prejudice concerning a party or a party's lawyer."[26] "Judges must apply extra caution when using social media because their online activity may be easily misconstrued or create an appearance of partiality requiring disqualification."[27]

These principles of avoiding impropriety, or the appearance of impropriety, and remaining impartial should be the touchstone for

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

judges considering whether their use of social media is appropriate. As social media becomes more pervasive in our society, judges must be able to discern what is and what is not proper social media usage. The Code of Judicial Conduct puts judges on notice that they must exercise caution in their use of social media: "A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code."[28]

EXAMPLES OF JUDICIAL MISUSE OF SOCIAL MEDIA

Unfortunately, there are many examples of judges across the nation whose social media use has raised ethical concerns and has run afoul of the proper conduct expected of judges. These are some of the more recent noteworthy examples:

- A Tennessee judge was publicly reprimanded for giving online advice via Facebook on how to avoid arrests for shoplifting. He said his tongue-in-cheek tips on stealthy behavior and how *not* to hide the loot were meant to be entertaining and make people reflect on their choices. The commission reviewing his behavior determined it was neither dignified nor appropriate for a judge, especially one who hears criminal cases.[29]
- A South Carolina probate judge who had previously been suspended for problematic social media posts was once again suspended (this time for 18 months) in part for solicitation of hurricane relief donations as a birthday fundraiser via Facebook on a page that identified him as a judge. In connection with his prior discipline, he had promised to both refrain from making political or fundraising posts and remove references to his judicial role.[30]
- The California Commission on Judicial Performance publicly admonished a judge for activity in a Facebook group and on Twitter in connection with efforts to recall a district attorney. The commission found that his online activity (and it was genuine activity, not passive membership in groups or just following pages) suggested bias against certain groups of people.[31]
- The New York State Commission on Judicial Conduct admonished a judge for publicly displaying on his Facebook page two photographs of himself wearing a county sheriff's uniform (taken after he retired from law enforcement) and his personal comments expressing his appreciation for law enforcement officers and also describing his appearance at an event supporting law enforcement. The judge recognized that those viewing his posts and seeing him in a law enforcement uniform would reasonably question his ability to be impartial in cases involving law enforcement and took full responsibility for his actions.[32]
- The Tennessee Board of Judicial Conduct reprimanded a judge for messages sent to multiple women on social media platforms over a period of several years, ranging from flirtatious to overtly sexual in nature, most of which depicted him in his judicial robe. The judge acknowledged that this conduct was beneath the dignity of the judicial office.[33]
- After posting links to anti-Semitic and anti-Muslim articles on his Facebook account, a Tennessee judge was reprimanded.[34] Other Facebook posts made by the judge stated, "Democrats won in the 2018 midterms by getting illegal aliens to vote," and another claimed, "Illegal immigrants are responsible for a large number of crimes."[35] These posts were deemed partisan in nature and a violation of the Code of Judicial Conduct.[36]
- The Nevada Commission on Judicial Discipline publicly reprimanded a municipal court judge for using a photoshopped image and signature of Dwayne Johnson, aka "The Rock," in an endorsement ad on her campaign's Facebook page. The ad featured the judge in her robe next to the image of "The Rock." She also commented, "I'm 'almost' taller than him. Almost." The judge knew her campaign consultant had not received permission from Mr. Johnson when it was posted. She had the ad and her comment taken down the following day.[37]
- A Tennessee judge was publicly reprimanded and determined to have abused

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

the prestige of her office by soliciting school donations on Facebook while wearing her judicial robe.[38]

- A Georgia judge faced numerous complaints related to her use of Instagram, Twitter and Cash App, including soliciting money donations for her birthday, offering relationship advice and making restaurant recommendations – all while a candidate for judge.[39]

NAVIGATING PROPER USE OF SOCIAL MEDIA MOVING FORWARD

So long as the 2011 Oklahoma panel opinion remains, judges must exercise great caution when using social media. A judge's duty to maintain impartiality and avoid any appearance of bias means that judges must be selective in choosing their Facebook friends and other social media contacts, and judges should not publicly express their opinions on controversial issues. A simple screen tap signifying that you like, heart, follow or even view a social media post can easily be translated to mean approval of that post and implicate a real or perceived bias.

A secondary concern with judges using social media is that it can compromise the confidentiality of ongoing cases. A careless judge may inadvertently reveal details about cases they are presiding over, which can lead to mistrials or appeals. Social media use may also expose judges to security risks, including cyberstalking, harassment and exposure to a judge's children and loved ones.[40]

Additionally, the American Bar Association has published a guide for judges on social media use, which includes recommendations for avoiding the appearance of bias or impropriety.[41]

My survey of Oklahoma judges found that the most common use of Facebook by judges was for their campaigns. Facebook pages, rather than personal accounts, are created by judges to reach out to voters. The page feature allows a judicial candidate to advertise and measure the effectiveness of the content on that page. An entire industry has sprouted up in recent years catering to political candidates and helping them target their social media advertising to select voters. Because it is cost-effective, many candidates for local office, including judges, are spending more money on social media than advertising on traditional media platforms like radio and newspapers. Judges who use Facebook for campaigns report that once their campaign is over, they delete or deactivate their Facebook page.

The panel summed up the best advice for judges who decide to use social media; restating admonitions from Kentucky and New York judicial advisory opinions, the Oklahoma panel advises, "Social networking sites are fraught with peril for Judges. We agree wholeheartedly with the admonition."[42]

OKLAHOMA SUPREME COURT SOCIAL MEDIA STATEMENT

Former Oklahoma Supreme Court Chief Justice Noma Gurich issued a social media statement in 2019 to all members of the Oklahoma judiciary and court employees. Her statement is a practical and succinct tool to guide the judiciary in the proper use of social media.

> Remember to be mindful in your use of personal social media. You must remember that anyone and everyone in the public is a potential audience of your postings. Your use of social media may raise ethical, security and privacy concerns. As judges and court

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

support personnel, we must consider the impact of our statements on the public.

We must avoid the perception of showing favoritism toward any litigants or parties. We should not engage in political discussion or otherwise make negative comments about the other branches of government. We want to gain the trust and respect of the public. Likewise, we must show respect.

Please remember that our non-partisan system of selecting judges was adopted at a time of great public mistrust of our state judicial system. We must be cautious in any public comment which suggests we no longer value our non-partisan status. Help all of us maintain high ideals.

Thank you for your continued hard work and service to all communities in Oklahoma. Think before you post. You are the face of the judiciary.[43]

Until such time that the panel reconsiders its opinion or the Oklahoma Supreme Court adopts the majority position allowing more flexible use of Facebook and other social media platforms, judges who decide to use social media to communicate and connect with others are wise to remember that less is best. Avoid liking, retweeting and commenting on others' posts; if you must, exercise great caution. In choosing who you friend or follow or what groups to join, remember to "aspire at all times to conduct that ensures the greatest public confidence."[44] Use privacy settings to control who sees your account and your posts. And remember that everything a judge posts on social media is a reflection of not just the judge but also of the judicial system. Use social media to build confidence in the rule of law and the judiciary.

Author's Note: The author thanks the Oklahoma Bar Journal *Board of Editors Chair Melissa DeLacerda for her solicitation and support of this article.*

ABOUT THE AUTHOR

Judge Thad Balkman was appointed district judge for the 21st Judicial District (Cleveland County) in 2013. Judge Balkman currently serves as presiding judge of the Oklahoma Court on the Judiciary, Trial Division, and chairman of the Rules of Professional Responsibility Committee. He has been the president of the Oklahoma Judges Association since 2018, and he is the past president of the Oklahoma Judicial Conference. He is a member of the Uniform Law Commission.

ENDNOTES

1. Survey by Thad Balkman of Oklahoma judges "Your Experience with Social Media" (May 23, 2023).
2. Britannica, https://bit.ly/3OguGfQ (last visited June 2, 2023).
3. Survey "Your Experience with Social Media," *supra* note 1.
4. Okla. Jud. Ethics Advisory Panel, Formal Op. 11-3, ¶7 (2011).
5. *Id.* ¶¶1, 3.
6. *Id.* ¶7.
7. *Id.* ¶2.
8. *Id.* ¶6.
9. *Id.*
10. *Id.*
11. Mandamus, *Clark v. Sullivan*, FD-2017-38, No. MA-115029, (Okla. Order No. 116, 029 granted June 20, 2017).
12. Okla. Jud. Ethics Advisory Panel, Formal Op. 11-3, ¶7.
13. *Id.*
14. *Id.* at ¶8.
15. 271 So. 3d 889 (Fla. 2018).
16. *Id.* at 898-99.
17. *Id.* at 892.
18. *Id.* at 897.
19. *Id.* at 896.
20. *Id.* at 897.
21. *See also McGaha v. Commonwealth*, 414 S.W.3d 1, 6 (Ky. 2013) ("It is now common knowledge that merely being friends on Facebook does not, *per se*, establish a close relationship"), *Kirby v. Wash. State Dep't. of Emp. Sec.*, No. 70738-8-I, 214 WL7339610, at *1 (Wash Ct. App. Dec. 22, 2014) ("The words 'post,' 'friend,' and 'friending' used in the [Facebook] context merely refer to individuals communicating with those listed on a social networking website and do[ ] not, necessarily, imply any more significant relationship between those individuals.")
22. Florida, Massachusetts and Oklahoma take a "strict approach." California, Arizona, Utah, Texas, North Carolina and Florida take a "moderate approach." Maryland, New York, Kentucky, Ohio, South Carolina, Georgia and Tennessee have taken a more "liberal approach." Shaziah Singh, "Friend Request Denied: Judicial Ethics and Social Media," 7 Case W. Reserve *J.L. Tech. & the Internet* 153, 167 (2016).
23. N.Y. Jud. Ethics Comm., Formal Op. 13-39, ¶3 (2013) ("the mere status of being 'Facebook friend,' without more, is an insufficient basis to require recusal").
24. Okla. Stat. tit. 5 app. 4, §Preamble (OSCN 2023) (Code of Judicial Conduct).
25. *Id.* §Canon 1.
26. *Id.* §Rule 2.11(A)(1).
27. *See In re Disqualification of Kerenyi*, 2020-Ohio-1082, 160 Ohio St. 3d 1201, 1203, 153 N.E.3d 121, 123.
28. Okla. Stat. tit. 5 app. 4, §Rule 1.2 cmt. [2].
29. *See In re Webb*, File No. B21-8602 and B21-8654, Tenn. Bd. of Jud. Conduct (Nov. 5, 2021) (Letter of Reprimand to Judge Gerald Webb).
30. *See In re Johns*, Opinion No. 28064 (S.C. Oct. 13, 2021).
31. *See In re O'Gara*, Cal. Comm. on Jud. Performance Decision and Ord. Imposing Pub. Admonishment (Sept. 14, 2021).
32. *See In re Peck*, N.Y. Comm. on Jud. Conduct (March 19, 2021).
33. *See In re Young*, File No. B20-8220, Tenn. Bd. of Jud. Conduct (Oct. 5, 2020).
34. *See In re Lammey*, File No(s). B19-7753 and B19-7777, Tenn. Bd. of Jud. Conduct (Letter of reprimand).
35. https://bit.ly/44vRRs4 (last accessed July 14, 2023).
36. *See In re Lammey*, File No(s). B19-7753 and B19-7777, Tenn. Bd. of Jud. Conduct (Letter of reprimand).
37. *See In re Almase*, 2017-099-P, Nev. Comm. on Jud. Discipline (Oct. 22, 2018).
38. *See In re Boyd*, File No. B22-9105, Tenn. Bd. of Jud. Conduct (May 8, 2023).
39. *See In re Peterson*, File No(s). 220-280, 2020-316, 2020-317, 2020-525, 2021-017, Jud. Qualifications Comm. (Ga. July 22, 2021).
40. Peter M. Reyes Jr., "To Post or Not to Post: Judges on Social Media," Summer 2019 ABA *The Judges' Journal*.
41. John G. Browning, "When All That Twitters Is Not Told: Ethical Risks in Judicial Use of Social Media," Fall 2021 ABA *The Judges' Journal*.
42. Okla. Jud. Ethics Advisory Panel, Formal Op. 11-3, ¶7 (2011).
43. Social statement from the Chief Justice Noma D. Gurich, Supreme Court of Oklahoma (November 2019).
44. Okla. Stat. tit. 5 app. 4, §Preamble [2] (OSCN 2023), Appendix 4 – Code of Judicial Conduct.

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

More Mediators. More Experience. More Results.

Ted Sherwood
Eric Eissenstat
Joe Farris
Chad Moody
M. David Riggs
Hugh Robert
David Russell
Robert Sartin
Bill Threlkeld
Christian Tolen
Danny Williams

ACCORD
MEDIATION | ARBITRATION

15 W. 6th St.
Suite 2800
Tulsa, OK
74119

918-592-1144

View calendars & book online at AccordADR.com

Like Brothers, Like Sisters

By Travis Pickens

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

Content warning: This article discusses suicide and gun violence and contains graphic content.

My brother, Doug, was a practicing Oklahoma lawyer. Like any of us, he had enjoyed success in school and work. He had a T-shirt that read, "I'll try anything once ... maybe twice," which summed up his personal philosophy. That credo could be shared by many lawyers. The DNA of an attorney is often uncommon intelligence blended with a need for excitement and risk, and the adrenaline and dopamine rush that comes with it.

It had started in high school, where he was on the debate team – often a training ground for future lawyers. Periodic out-of-town trips allowed him to sneak the occasional drink and cigarette in the hotel room with his teammates. Inevitably, as high school progressed, the partying expanded to include frequent Friday and Saturday nights when his group would pool their money and rent a room at a local hotel. The hospitality suite was open – an early taste of college life.

When he went to a private Texas university on a debate scholarship, his partying expanded. The occasional out-of-town trips in high school blossomed into multi-day tournaments to both coasts in a van led by the team's broad-minded 20-something-year-old coach. Lots of time was spent sitting around hotel rooms, socializing after rounds, drinking scotch and maybe smoking an occasional joint. My brother had discovered the exhilaration many of us have known (and that is termed, often with admiration, "work hard, play hard").

Finally, when he failed to show up for a semester final and failed a class (archery for God's sake), my father summoned him home to go to a local university, especially if he was serious about going to law school, something he had wanted since the sixth grade. He came home, left his drinking for the most part to weekends and pulled his grades up. He was admitted to law school and maintained his regimen of occasional social drinks during the week, leaving more earnest recreation for the weekends. He could function that way.

He did well enough in law school and as a beginning lawyer to land good jobs at respected firms and eventually made partner doing oil and gas title work. All the while, his drinking continued to escalate. Like many seasoned drinkers, my brother drank every night but performed well enough the next day. Again, "work hard, play hard." But like almost every story of a practicing alcoholic, his drinking began to consume more and more of his spare time. Going out after work became a regular ritual, followed by more drinks at home and more drinking on the weekends. He carried a liter bottle of scotch in the trunk of his car like a spare tire, just in case.

He had always been careful about appearances; most lawyers are because our reputations mean so much. Despite his daily struggles with alcohol, Doug was an award-winning Boy Scouts Scoutmaster for many years, and he served on the board of a local high school. He had close and caring friends. And like many of us, he had a servant's heart, a great sense of humor and could compartmentalize his demons when necessary. We lawyers are not purely good – no one is – but more akin to the biblical David, capable of great wisdom and folly, great deeds and misdeeds.

As his illness progressed, he withdrew from friends if they became aware of his excesses. He began to tell elaborate lies and drop vague dramatic hints about

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

terminal illness. His best friends were a small, close-knit circle of wonderful people who might have known he was drinking too much but, understandably, were protective of him. They loved him as we all do our closest friends and did not want to embarrass him or lose him as a friend after a confrontation. The same, I suppose, could be said of his firm colleagues.

As the years passed, his health deteriorated; he developed high blood pressure in his early 30s, a bleeding ulcer, worsening asthma and other medical issues. His medicines and pills amounted to a small traveling pharmacy; he kept them in a tackle box.

In the latter stages of his illness, our family became more and more suspicious. He slowly withdrew, leaving gatherings early or avoiding them altogether. He became financially reckless and borrowed money from our parents. He gave extravagant gifts to friends and spent large amounts on guns and other expensive hobbies. Our father eventually questioned him directly and called some of his close friends; they shared our concerns. We did not contact his firm for fear of putting his job in jeopardy. The firm never let us know if it had been concerned, but we learned later that a few of his close colleagues were, and a senior partner who had faced the same challenges informally counseled him. They cannot be blamed. It was a different time, and again, he appeared to perform well enough during business hours.

Our family eventually set up an intervention, and he reluctantly agreed to enter treatment. When he came out, we held our breath to see how he would do.

A few weeks later, I got a call from our father at work. My brother had not gone to the office and had not been heard from. He lived alone and had always let Mom and Dad know if he planned to leave town. Dad was worried and decided to check his house. When he arrived, he found the house locked up tight. The door had been nailed shut. Checking the kitchen window, my father saw a large, sloppy stack of pipe tobacco on the table with papers lying around on the floor. He instinctively knew something terrible had happened. To spare the rest of us, my father called his best friend, who lived nearby, and with his help, broke into the house to search for my brother.

My 66-year-old father then walked into Doug's bedroom and found his 35-year-old son lying on the floor. He had died from a self-inflicted gunshot wound.

We later spoke to a psychiatrist whom my brother had used during treatment. His alcoholism had been fueled by his bipolar disorder. He used alcohol to self-medicate, but drinking had only worsened his condition and deepened his periods of depression.

In the years that have passed, I have seen other examples of the "functioning alcoholic" and have seen the same pattern play out, although, thankfully, usually not with the same tragic conclusion. Lawyers and firms often do not know what to do with the functioning addict or alcoholic. No one benefits, including the clients.

Law firms have generally followed one of three philosophies:

1) To generally be sympathetic but choose to leave the impacted lawyer alone, maybe months or even years, thinking they will eventually "self-correct," or someone else closer – maybe a family member – can, should and will intervene;
2) To choose to honor the myth that we lawyers hold especially dear, that we are wholly autonomous independent beings, and out of respect for the troubled lawyer's dignity, we should leave them alone, even if they may be in the process of self-destruction;
3) To fear losing our relationship with a professional colleague (or we may be in a subordinate position to the troubled lawyer) and don't want to do anything that puts our relationship or position at risk with that person or the firm. At most, we may discreetly advise a senior or managing lawyer or make informal gestures of concern but force nothing until there is a pattern of irrefutable acts endangering others or clients.

These philosophies, as natural and humane as they may seem, not only enable the impacted lawyer but also put clients at risk. The correct path is to rigorously follow Rule 5.1 of the Oklahoma Rules of Professional Conduct, as it outlines a proactive approach that is designed to protect clients but will protect you and your practice group in so doing. It

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

requires lawyers with "managerial authority" in any association of lawyers to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." We are, of course, familiar with systems to docket dates and check conflicts, but maintaining healthy lawyers? Not so much. Because it is hard to do, given privacy issues and our resistance to outside accountability.

One way would be to impose greater supervision over the work of younger lawyers and maintain direct accountability of all lawyers, even the ones with many years of experience. Mentorships are one way. A "wellness and practice committee" would be another. Issues could be discovered earlier, and the lawyer could be directed to treatment before it is too late.

Other rules are germane. Rules 10.1 and 12.1 of the Rules Governing Disciplinary Proceedings create a direct obligation for a lawyer associated with the impacted lawyer to notify the General Counsel's Office of a lawyer's incapacity due to "[h]abitual use of alcoholic beverages [author's note: *any* mentally or physically disabling substances] ... to any extent which impairs or tends to impair ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law." Importantly, Rule 12.1 states that any other lawyer should give notice if it appears notice was not given.

Other rules – such as ORPC Rule 5.2, "Responsibility of a Subordinate Lawyer" (not alleviated from responsibility), and Rule 8.3, "Reporting Professional Misconduct" (when certain knowledge) – also create duties that should be considered and that provide accountability.

The best approach would incorporate opportunities for lawyers to seek assistance confidentially, before they hurt themselves or a client and before a mandatory reporting duty is triggered. Perhaps the firm or legal group could set up a "lawyer assistance group" or a single lawyer to whom the troubled lawyer could initially report, safely and confidentially. That committee or contact could then assist the troubled lawyer in finding the next right step, whether it is an appointment with a mental health provider, a referral to Lawyers Helping Lawyers or placement with a rehab facility. The firm should reassure the troubled lawyer, if possible, that they will not be impacted should treatment be successful.

Many years have passed since my brother died. The firm he knew is long gone, and his former partners are either retired or have moved on in some way. I'm sure they dealt with him as best they could at the time, but more should be expected of us now for the sake of the lawyers and, most importantly, the clients. Romantic notions of stubborn self-reliance should be seen for what they are – often harmful to both lawyers and clients.

The correct path is to rigorously follow Rule 5.1 of the Oklahoma Rules of Professional Conduct, as it outlines a proactive approach that is designed to protect clients but will protect you and your practice group in so doing.

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

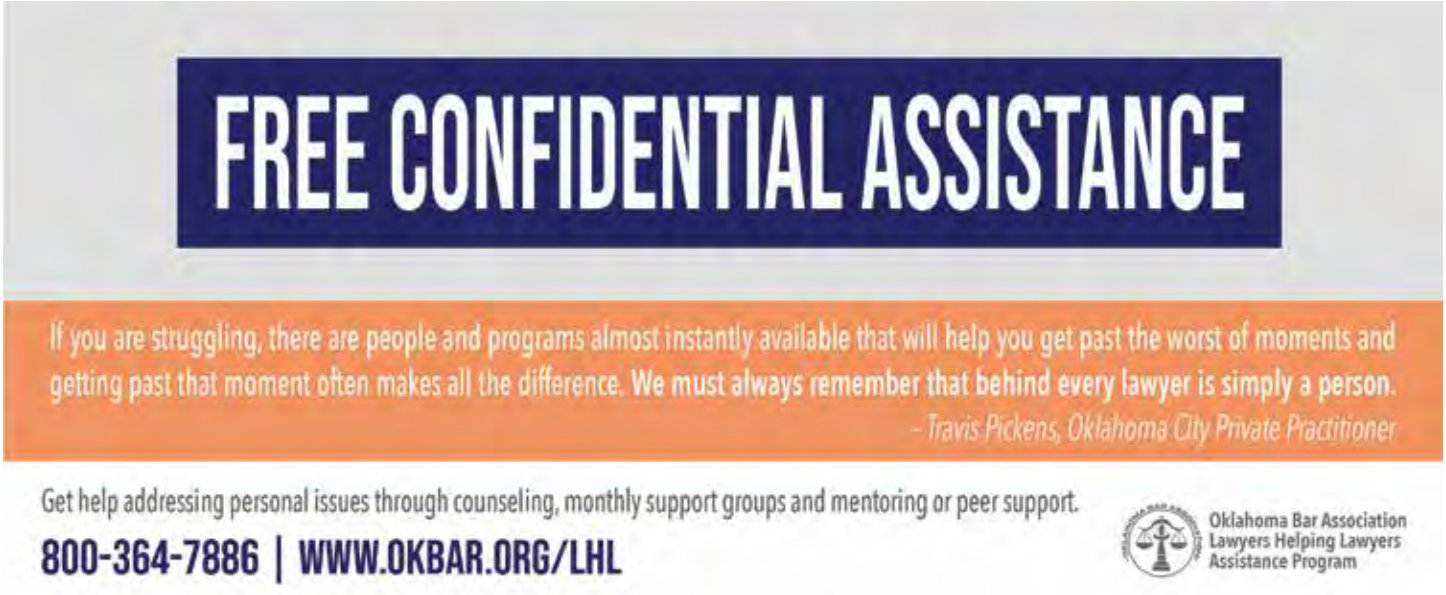
Another and more personal way to further improve the odds of success with troubled lawyers is to elevate the way we look at our fellow lawyers – see them as not just professional colleagues but also as part of our professional *family*. Like genuine family members, we would rush to help or assist with a problem. Instead of quietly standing by, we should proactively act on the impulse to intervene in an obviously bad situation.

We should recognize that we are privileged to practice one of the historical professions; like physicians and priests, lawyers are often called to serve people and institutions at the most critical and painful times in their lives. We all share that honor and privilege but also the unique stress and emotional weight that goes with it, an unavoidable and dangerous burden.

We all must do our part to uphold the long black line of the law, for ourselves, for our clients and *for our colleagues.* We are inextricably bound in this profession, as people with very similar attributes and weaknesses in the same place and time, like a flesh and blood family – like brothers, like sisters.

ABOUT THE AUTHOR

Travis Pickens is a civil litigation and ethics lawyer in private practice in Oklahoma City. From August 2009 to January 2015, he served as ethics counsel for the Oklahoma Bar Association and as an OBA liaison to the Lawyers Helping Lawyers Assistance Program Committee. For many years, he served as an adjunct professor of law practice at the OCU School of Law.



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

WARNING SIGNS OF SUICIDE

The National Institute of Mental Health publishes a list of behaviors that may indicate someone is thinking about suicide. The signs might include:

Talking about:

- Wanting to die
- Great guilt or shame
- Being a burden to others

Feeling:

- Empty, hopeless, trapped or having no reason to live
- Extremely sad, more anxious, agitated or full of rage
- Unbearable emotional or physical pain

Changing behavior, such as:

- Making a plan or researching ways to die
- Withdrawing from friends, saying goodbye, giving away important items or making a will
- Taking dangerous risks, such as driving extremely fast
- Displaying extreme mood swings
- Eating or sleeping more or less
- Using drugs or alcohol more often

If these warning signs apply to you or someone you know, get help as soon as possible, particularly if the behavior is new or has increased recently.

https://www.nimh.nih.gov/health/publications/warning-signs-of-suicide

988 SUICIDE AND CRISIS LIFELINE

According to fcc.gov, every 11 minutes, someone in the United States dies by suicide; suicide is the leading cause of death for those between 10 and 34 years of age.

The 988 Suicide and Crisis Lifeline is a network of mental health centers across the nation assisting those with urgent mental health crises. If you or someone you know is in crisis, you can call or text 9-8-8 to be connected with mental health professionals who are trained to help you overcome these difficult and urgent situations.

For more information, visit fcc.gov/988-suicide-and-crisis-lifeline.

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

Pro Bono as an Ethical Obligation and Opportunity

By Melissa Brooks and Katie Dilks

"Professionalism for lawyers and judges requires honesty, integrity, competence, civility *and public service*." – Definition from the Oklahoma Bar Association Standards of Professionalism

Public service and the provision of legal services for those who cannot afford them is a deeply rooted ethical obligation for attorneys. Sections 1.1, 1.3 and 1.5 of the OBA Standards of Professionalism all underscore this obligation and start to highlight the myriad ways it can be meaningfully met.[1] The American Bar Association Model Rules of Professional Conduct lay out this expectation as well, in Rule 6.1, stating that lawyers have a professional responsibility to provide legal services to those who cannot afford it and should aspire to contribute at least 50 hours of pro bono service annually.[2]

Law schools regularly educate students on the importance of pro bono, encouraging consistent service through voluntary pro bono pledges – a feature at all three of Oklahoma's law schools. Why, then, do so few of our attorneys regularly engage in pro bono work? We believe the challenge lies in three primary areas:

1) A lack of understanding about the range of ways to help those in need or the most effective ways to make a difference.
2) A belief that the practice of law is a zero-sum game and time spent on pro bono is necessarily at the expense of fee-generating work.
3) A disconnect between those in need and those who can help.

THE IMPORTANCE OF PRO BONO LEGAL SERVICES

At the Oklahoma Access to Justice Foundation, we endeavor to address all these points in meaningful ways. One tactic is education around the range of pro bono needs and opportunities. Many attorneys believe the only way to help is by volunteering to take on a full-representation case, often in family law and often seemingly interminable. While it is true that Oklahoma lacks sufficient resources for low-income individuals facing family law needs, these cases are just a fraction of the kind of work attorneys can take on to improve the lives of their neighbors. Many people need assistance in areas well suited for limited-scope services, such as wills preparation, representation in eviction court, assistance with benefits applications or appeals and title clearing. Additionally, even in areas of family law, limited-scope services are often incredibly valuable. The Pro Se Waiver Divorce Clinic in Oklahoma County is an excellent example of the impact limited assistance can have in helping litigants ensure their documents are correctly prepared.

There are also opportunities to help organizations that serve low-income and underserved populations. Assisting with contracts, governance, employment law and the other day-to-day legal needs of nonprofits is another way to provide pro bono service and positively impact our state.

Secondly, we often hear that there just aren't enough hours in the day, or a firm cannot afford to do more pro bono work. While we all wish more time was available,

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

increasingly, firms can't afford not to invest in pro bono. As we mentioned earlier, law students are being supported in developing a habit and expectation of pro bono service, and it is a critical question many ask when looking for post-graduate employment. Developing a robust pro bono program is an excellent recruitment tool, and it is effective as a retention strategy as well. A new survey from Major, Lindsey & Africa found that a meaningful number of Generation Z law students and recent graduates would leave an employer if they felt their values were not aligned with the work, and incorporating pro bono service can be an effective way to address that concern.[3] The same survey found that 61% of respondents ranked pro bono as very or somewhat important when assessing a potential employer.

Research has found that employees are more engaged at work when they feel connected to a broader mission or purpose, have opportunities to learn and grow, are recognized for their work and can use their strengths.[4] Pro bono service can help address all these engagement factors, leading to higher retention rates and more engaged and productive teams. It can also function as a critical professional development tool for younger attorneys or those looking to build new skill sets. A firm may not have the ability to put a junior associate on an important deposition, but ensuring they can gain those skills through a pro bono case can be a win-win for the firm and the lawyer.

Finally, many corporate clients are increasingly expecting volunteerism to be a standard part of their outside counsel's approach and commitment. Major corporations will even partner with firms on pro bono projects. Investing in pro bono helps raise a firm's profile with existing and potential clients and opens new chances for networking and engagement.

Even when attorneys understand the need for pro bono and are motivated to provide those services, there can still be an obstacle in connecting with an organization to volunteer. That's why, in 2020,

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

the Oklahoma Access to Justice Foundation started our statewide pro bono portal: okprobono.org. It's a one-stop shop for potential volunteers to browse opportunities from over a dozen organizations across the state and volunteer with the click of a button.

When you are providing pro bono service, it's important that you maintain the ethical obligations expected of all attorneys, particularly competence, honesty, professionalism, civility and unbiased professional conduct. Fortunately, there are many ways to fulfill your ethical obligation while effectively serving your community.

ETHICS OF PRO BONO LEGAL SERVICES

The OBA Standards of Professionalism represent the behavior expected of Oklahoma attorneys in their dealings with each other, clients, courts and the public. Among these expectations are ongoing legal education (2.4), honesty, civility and professionalism in dealings with clients (1.6) and comporting professional conduct in an unbiased manner.

Standard 2.4 indicates that lawyers are expected to "continually engage in legal education and recognize our limitations of knowledge and experience." Paired with the requirement for competent representation in Rule 1.1 of the Oklahoma Rules of Professional Conduct, attorneys may feel they are limited to the provision of pro bono legal services that are within their area of expertise. However, working with a pro bono program that provides training and/or ongoing assistance in an area where an attorney may feel less comfortable is truly a great opportunity to meet their ethical obligation to provide pro bono services and learn new skills or a new area of law. Additionally, this model aligns with Comment 2, which emphasizes the importance of the fundamental skill of identifying the involved legal problems, specifically stating "necessarily transcends any particular specialized knowledge."

Honesty, professionalism and civility are expected in our conduct with clients, opposing counsel, parties, witnesses and the public (1.6). In addition to these guidelines for conduct, the Standards of Professionalism also expect a higher degree of grace and courtesy for our clients. More specifically, "We will refrain from engaging in professional conduct which exhibits or is intended to appeal to or engender bias against a person based upon that person's race, color, national origin, ethnicity, religion, gender, sexual orientation or disability." These considerations are necessary for all involved in a legal matter. Thus, attorneys should always strive to act in a professional manner in accordance with the Rules of Professional Conduct. Fortunately, many legal services organizations provide training around effectively working with marginalized communities that can improve one's ability to offer culturally sensitive legal services.

If you are looking for a pro bono opportunity that provides training and support to learn a new area of law, we highly recommend partnering with an organization that has a robust pro bono program, such as Legal Aid Services of Oklahoma, Tulsa Lawyers for Children, Oklahoma Lawyers for Families and Children, Oklahoma City Afghan Legal Network, Palomar or one of the many others you can find through the Oklahoma Pro Bono Portal. Pro bono service is an outstanding chance to meet your professional ethical responsibility, continue your professional development and serve your fellow Oklahomans.

ABOUT THE AUTHORS

Melissa Brooks is the director of legal information and engagement at the Oklahoma Access to Justice Foundation, where she supports and expands pro bono efforts across Oklahoma and builds public legal information. Ms. Brooks earned her J.D. at the OCU School of Law with a certificate in estate planning.

Katie Dilks is the executive director of the Oklahoma Access to Justice Foundation, which strives to increase meaningful participation in a fair and accessible civil justice system. Ms. Dilks received her J.D. and master's degree in public policy from Georgetown University.

ENDNOTES

1. 1.1 We understand that the law is a learned profession and that among its tenets are devotion to public service, improvement of the administration of justice, and access to justice for our fellow citizens. 1.3 We will donate legal services to persons unable to afford those services. 1.5 We will contribute time on a pro bono basis to community activities. https://bit.ly/3NFuLrl.
2. https://bit.ly/43g34vn.
3. Major, Lindsey & Africa, "Gen Z: Now Influencing Today's Law Firm Culture," 2023.
4. https://bit.ly/43pHzIZ.

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

oba cle
continuing legal education

WEDNESDAY,
SEPTEMBER 6, 2023
1 - 5 p.m.

LOCATION:

FIRST NATIONAL CENTER

120 N. Robinson Ave., OKC

Foundations in Energy & Natural Resource Law for the Lawyer with No Foundation

Co-sponsored by the OBA Energy and Natural Resources Law Section

This program will cover selected topics in energy & natural resource law to provide a basic introduction and understanding for the general practitioner and lawyer whose practice is not focused energy & natural resource law.

PRICING:
Early Bird Pricing: $100
Week of Program: $125

FREE FOR LAW STUDENTS

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

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

Probate 'Venue' Is, and Always Has Been, 'Jurisdictional': Legislative Confirmation of *Fulks*

By Kraettli Q. Epperson

IT IS GENERALLY KNOWN that the rule in Oklahoma is that "[v]enue refers to the location where a case should be tried, and jurisdiction is the power of a court to decide an issue on its merits,"[1] and "[v]enue ... may be waived, and does not refer to jurisdiction at all."[2] However, in the case of probate proceedings, filing in the proper "venue" (*i.e.*, county) is, and always has been, "jurisdictional."[3] Failure to have jurisdiction (*i.e.*, subject matter jurisdiction) creates a void judgment, and "[a] void judgment, decree or order may be vacated at any time, on motion of a party or any person affected thereby."[4]

This rule that probate venue is not waivable was affirmed in 2020 when the Oklahoma Supreme Court, in the case of *Fulks*, overturned the 2018 Oklahoma Court of Civil Appeals case of *Walker*.[5] The Oklahoma Supreme Court explained in *Fulks* that, pursuant to 58 §5(1), a probate proceeding for a decedent who was a resident of Oklahoma at the time of death *must* be filed in the district court in the county in Oklahoma where the decedent was a resident at the time of death.[6] Other venues for probate proceedings are available but only if the decedent died while a resident in another state.[7]

Upon the issuance of the decision in the *Fulks* case, there was concern among the practicing bar that many attorneys had temporarily (from 2018 to 2020) relied on the Oklahoma Court of Civil Appeals ruling in *Walker*. *Walker* cited 58 O.S. §5(5) and relied on its language, "*5.* In all other cases, in the county *where application for letters is first made*," to conclude, "Accordingly, a priority no longer exists in the statute and a probate action may be filed in *any* of the applicable situations listed in §5. As a result, venue was proper in Osage County District Court in PB-2012-43, as it was the county where *application for letters was first made*."[8] This concern by practicing attorneys was about what happened to the validity of the probate proceedings they had conducted in the wrong county (including the validity of any deeds issued). Some attorneys hoped they were protected by the language in *Fulks* that said, "As a result, the rule suddenly *became* that probate venue was proper anywhere in the state of Oklahoma," hoping the *Fulks* court was hinting that the ruling in *Walker* was at least temporarily effective *until* expressly overturned two years later by *Fulks* (in 2020). This faint hope fails when one realizes that the state of the law before *Walker* was that probate venue was "jurisdictional."[9] [10]

However, adding to the confusion is the fact that while the *Fulks* case clearly holds that a probate proceeding for an Oklahoma resident can *only* be filed in the Oklahoma county of residence of the decedent, it repeatedly uses the word "venue" but never uses the word "jurisdiction."

To ensure that the holding of *Fulks* and the related statute (58 O.S. §5) were interpreted to mean that the requirement to file a probate proceeding in the correct county (*i.e.*, venue) was a "jurisdictional" matter, in 2022, the Oklahoma Legislature amended this statute[11] to provide:

> The district court in and for the county of proper venue has exclusive *jurisdiction* to prove a

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

will or to grant letters testamentary or of administration. Proper venue for hearing in such actions shall be determined as follows:

1. If the decedent died as a resident of this state, in the county of which the decedent was a resident at the time of his or her death, regardless of where the decedent died; …

The clarification provided by this amendment to the subject statute – when considered with the *Fulks* ruling – is that all probate proceedings filed before or after the effective date of the act (Nov. 1, 2022) involving decedents who died while residents of Oklahoma must be filed – for the court to have jurisdiction – in the Oklahoma county that is the residence of the decedent. Because the probate court in the wrong county never had "jurisdiction," all actions taken in such proceedings were "void." This would mean that all orders, notices and conveyances in the proceedings were invalid and subject to challenge at any time.

The *Walker* opinion may have misguided the public, attorneys and judges into innocently conducting these probate proceedings for Oklahoma residents in the wrong county for this two-year interim period (2018-2020). Consequently, it appears the Legislature provided a cutoff deadline to challenge these wrongly filed "final decrees":

3. In all cases of administration of estates of deceased persons in this state where *final decrees* have been entered prior to the effective date of this act [November 1, 2022], and for which the final decrees are or may be defective or invalid for lack of jurisdiction *because the administration was in a county other than the county of proper venue as prescribed by this section*, such final decrees shall be deemed valid; provided, however, the provisions of this paragraph:

a. shall not apply to any case where an action is instituted and maintained to modify or vacate the final decree within one (1) year of the effective date of this act, ..."[12] [13]

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

Some attorneys suggest you could avoid the transfer process by filing a totally new case in the correct county. The question then arose as to whether any money (*i.e.*, court costs) could be saved by pursuing one course of action rather than the other: 1) transfer and dismiss or 2) simply refile.

The result of this validating provision was:

1) All probate proceedings a) that were filed in the wrong county and b) that *did have* a final decree (and had passed the 30-day appeal deadline) would be "deemed valid" unless they were challenged – "to modify or vacate" – in court before the passage of one year from the effective date of this act, meaning the challenge must be filed before Nov. 1, *2023* (meaning this "final decree" and all other actions in the proceeding are "voidable"); *and*
2) All probate proceedings a) that were filed in the wrong county and b) that *did not have* a final decree (past the 30-day appeal period) by the effective date of this act, Nov. 1, *2022*, are still pending and must be transferred to the correct county and dismissed in the wrong county.

It should be noted that part 3(b) of this amended Section 5 preserves the basic due process rights of heirs and devisees/legatees who do not receive notice of the probate proceeding by providing:

> 3. In all cases of administration of estates of deceased persons in this state where final decrees have been entered prior to the effective date of this act, and for which the final decrees are or may be defective or invalid for lack of jurisdiction because the administration was in a county other than the county of proper venue as prescribed by this section, such final decrees shall be deemed valid; provided, however, the provisions of this paragraph: ...
>
> b. shall not bar the claim of a person claiming an interest in a decedent's estate if the person did not receive notice of the probate or estate administration, actual or constructive, as required by this title.

A series of additional practical questions have arisen among the practicing bar on how to proceed regarding cases filed in the wrong county 1) that were still pending (not finalized) on the effective date of this amendment – Nov. 1, *2022* – or 2) that were finalized before that Nov. 1, *2022*, date but are still within the one-year window – meaning until Nov. 1, *2023*.

In *Fulks*, the court ordered, "The matter is remanded [*sic*] Nowata County with directions for the trial court to transfer the cause to Osage County, and to dismiss the Nowata County proceedings."[14] Therefore, the initial impression is that such "still-pending" cases – no final decree, or a final decree but within the one-year window – must be transferred.

Some attorneys suggest you could avoid the transfer process by filing a totally new case in the correct county. The question then arose as to whether any money (*i.e.*, court costs) could be saved by pursuing one course of action rather than the other: 1) transfer

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

and dismiss or 2) simply refile. Because all the steps already undertaken in the initial case were done without the court having jurisdiction, they were all arguably void and would have to be redone in the transferred or new case. These would include actions such as an order admitting the will, an order appointing a personal representative, notice to interested parties (*e.g.*, heirs, devisees/legatees) and creditors, and orders authorizing or confirming the sale or distribution of assets, etc. The only apparent benefit to choosing between 1) transferring it to the right county and dismissing it in the wrong county or 2) simply refiling it in the right county is to avoid repaying the initial filing fee when filing it in the right county. All other actions (other than such payment) would have to be retaken under either course of action. In addition, if the proceeding in the wrong county had resulted in a "final decree," the parties must challenge the wrong proceeding presumably in the same "wrong" court – before Nov. 1, 2023 – otherwise, it would become "deemed valid." This is because simply filing a new proceeding in the right county would not vacate the prior proceeding.

CONCLUSION

When dealing with a probate proceeding for a decedent who dies while a resident of Oklahoma, 1) be sure to file the proceeding in the county of the decedent's residence on the date of the decedent's death (this information is provided on the face of the decedent's death certificate, which is probably a strong piece of evidence), 2) if a completed proceeding (final decree) is to be challenged, be sure the challenge is made before Nov. 1, *2023*, by transferring it to the right county and dismissing the prior proceeding (with prejudice) and (presumably) redoing all actions in the new proceeding, and 3) be sure to a) transfer any and all still-pending proceedings (*i.e.*, not completed) to the right county, b) dismiss the wrong proceeding and c) (presumably) redo all the usual steps, even if already completed.

ABOUT THE AUTHOR

Kraettli Q. Epperson is a partner with Mee Hoge PLLP in Oklahoma City. He received his J.D. from the OCU School of Law in 1978 and practices in the areas of mineral and real property title disputes. He chaired the OBA Title Examination Standards Committee from 1988 to 2020 and taught Oklahoma Land Titles at the OCU School of Law from 1982 to 2018.

ENDNOTES

1. *Atchison, Topeka & Santa Fe Ry. Co.*, 1961 OK 290, ¶23, 368 P.2d 475, 478.

2. *Robinson v. Oklahoma Employment Sec. Com'n*, 1997 OK 5, ¶8, 932 P.2d 1120, 1123.

3. *Presbury*, 1923 OK 127, ¶11, 213 P.311, 312: "Where the decedent is a resident of the state, the court having *jurisdiction* to probate his will is specifically fixed by this statute in the county court of the county in which the decedent was a resident at the time of this death, and such *jurisdiction* cannot be shifted about to any other county, near or remote, merely by being diligent in making the first application for the probate of the will in some other county than that of the residence of the decedent. *Only one county can have jurisdiction in such cases*, and that is the county in which the decedent was a resident at the time of his death." (emphasis added).

4. 12 O.S. §1038. However, it should be noted that: *"Unless void upon the face of the judgment roll, no judgment may be modified or vacated under the provisions of 12 O.S. 1991 §§ 1031 et seq. if proceedings for this relief are brought after expiration of the applicable time limits prescribed by 12. O.S. 1991 §§ 1031 and 1038. If evidence is needed to show a lack of some jurisdictional element, a three-year time bar applies." Stark v. Stark*, 1995 OK 61, ¶10, 898, P.2d 732, 737. Therefore, even without the provision of the 2022 amendment to 58 O.S. §5 (discussed below), which will treat these potentially void decrees as being "deemed valid," in the absence of a defect on the "face of the judgment roll" – if enough time goes by (three years) – any "void" decrees will become unassailable.

5. *In re Estate of Walker*, 2018 OK CIV APP 63, 439 P.3d 424.

6. *In the Matter of the Estate of Fulks*, 2020 OK 94, ¶24, 477 P.3d 1143, 1152: "Pursuant to §5, venue is prioritized and lies first and foremost in the county where the decedent resided at the time of death … Here, only one county, Osage County, is the proper venue. The trial court is reversed, and the matter is remanded [*sic*] Nowata County with directions for the trial court to transfer the cause to Osage County, and to dismiss the Nowata County proceedings"; *see* 58 O.S. §5 1; *also see* "Probate Venue (aka Jurisdiction) is Important: *Fulks* Overrules *Walker*"; 92 *OBJ* 28 (April 2021) by Kraettli Q. Epperson. It should be noted that under 59 O.S. §714 – Proceedings to Probate Jointly Two or More Wills as Estates, provides: "the court may grant letters testamentary and/or letters of administration, as the case may be, upon such estates in any county where venue would be proper for any of the estates so joined and they may be administered in one proceeding."

7. 12 O.S. §5 (2)-(5).

8. *Walker* §9.

9. *Fulks* §23.

10. *See* footnote 6.

11. 58 O.S. §5 (effective Nov. 1, 2022).

12. §5(3).

13. Note that it is necessary to have a "final decree" issued before the Nov. 1, 2022, date arrived in order to be entitled to such actions being "deemed valid"; for the "final decree" to be final, it presumably must be past the 30-day appeal date; also, failure to have reached that stage of the proceeding – producing anything less than a "final decree" – does not appear to trigger the saving clause. 12 O.S. §681 *Judgment defined:* "A judgment is the final determination of the rights of the parties in an action." "Since the merger of courts of law and equity, 'the terms "decree" and "judgment" are interchangeable,'" *Whitehead v. Whitehead,* 1999 OK 91, n. 6, 995 P.2d 1098, 1101 n.6.

12 O.S. §990A. "Appeal to Supreme Court by filing petition in error ..." "A. An appeal to the Supreme Court of Oklahoma, if taken, must be commenced by filing a petition in error with the Clerk of the Supreme Court of Oklahoma within thirty (30) days from the date a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title is filed with the clerk of the trial court."

14. *Fulks* ¶24.

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

TRUSTED. EXPERIENCED. RESPECTED.

40 YEARS PRACTICING | OVER 1,000 MEDIATIONS

"He is reasonable, practical, knowledgeable, thoughtful and fair."
-Ben Butts

"Jake works hard to make sure all avenues of resolution are explored which leads to great success for all involved."
-Margaret Clarke

"Jake is an extraordinary mediator. He is really effective."
-Mark Engel

"He has succeeded in resolving the claims I did not believe had a reasonable chance of settling."
-Rachel Mathis

"He is willing to put in the time and work to make a mediation successful."
-Phil R. Richards

"He has always been unfailingly respectful to my clients throughout the process."
-Phil Watts

www.jakejonesmediation.com
(405) 866-5253

JJ | JAKE JONES MEDIATION

The Oklahoma Bar Journal
Courts & More

DELIVERED TO YOUR INBOX EVERY WEDNESDAY!

The Oklahoma Bar Association's digital court issue, *Courts & More*, highlights Oklahoma appellate court information and news for the legal profession.

READ IT ONLINE NOW AT WWW.OKCOURTSANDMORE.ORG

SAVE THE DATE

OBA ANNUAL MEETING

NOV. 1-3, 2023

HISTORIC SKIRVIN HILTON HOTEL

DOWNTOWN
OKLAHOMA CITY

MORE DETAILS COMING SOON!

OKLAHOMA BAR ASSOCIATION

2023 OBA Board of Governors Vacancies

Nominating Petition Deadline: 5 p.m. Friday, Sept. 1, 2023

OFFICERS

President-Elect
Current: Miles T. Pringle, Oklahoma City
(One-year term: 2024)
Mr. Pringle automatically becomes OBA president Jan. 1, 2024
Nominee: **D. Kenyon Williams Jr., Sperry**

Vice President
Current: D. Kenyon Williams Jr., Sperry
(One-year term: 2024)
Nominee: **Vacant**

BOARD OF GOVERNORS

Supreme Court Judicial District One
Current: Michael R. Vanderburg, Ponca City
Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers and Washington counties
(Three-year term: 2024-2026)
Nominee: **Vacant**

Supreme Court Judicial District Six
Current: Richard D. White Jr., Tulsa
Tulsa County
(Three-year term: 2024-2026)
Nominee: **Philip D. Hixon, Tulsa**

Supreme Court Judicial District Seven
Current: Benjamin R. Hilfiger, Muskogee
Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties
(Three-year term: 2024-2026)
Nominee: **Vacant**

Member At Large
Current: Kara I. Smith, Oklahoma City
Statewide
(Three-year term: 2024-2026)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting Nov. 3, during the Nov. 1-3 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2023.

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

OKLAHOMA BAR ASSOCIATION
NOMINATING PETITIONS

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

OFFICERS

President-Elect

D. Kenyon Williams Jr.
Sperry

Nominating Petitions have been filed nominating D. Kenyon Williams Jr. for President-Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2024. Fifty of the names thereon are set forth below:

Christopher Lance Carter, Sarah C. Miller, Bailey Bryant Betz, Jack Coryell Bowker, Stuart Edward Van De Wiele, Margo Elizabeth Shipley, Thomas Michael Ladner, James Collins Hodges, Brita Haugland-Cantrell, James Robert Gotwals, Molly Anne Aspan, Paul Mario Catalano, Michael Hoyt Smith, Logan Lawrence James, Daniel Reading Ketchum, Richard Mark Petrich, Brian Timothy Inbody, Aaron Christian Tifft, Stephen Russell McNamara, Mason Blair McMillan, James C.T. Hardwick, James Kevin Hayes, Pamela Sue Anderson, Blake Howard Gerow, Mark Banner, Seth Aaron Day, Jonathan A. Epstein, Collin Robert Walke, John Frederick Kempf Jr., Stephen R. Pitcock, Daniel Jess Glover, Robert Dale Nelon, Raymond Stephen Rudnicki, Moira C. G. Watson, W. Davidson Pardue Jr., Jared Raye Ford, Bryan Ross Lynch, Kent Allan Gilliland, Elaine Renee Turner, Michael Raye Ford, Daniel Vaughn Carsey, Alexandra Albert Crawley, Alyssa Marie Gillette, John Wesley Gile, Hilary Hewitt Price, Emily Paige Pittman, Eric Christopher Money, Braden Wesley Mason, Nicholas Edwin Thurman and Johnathan Louis Rogers.

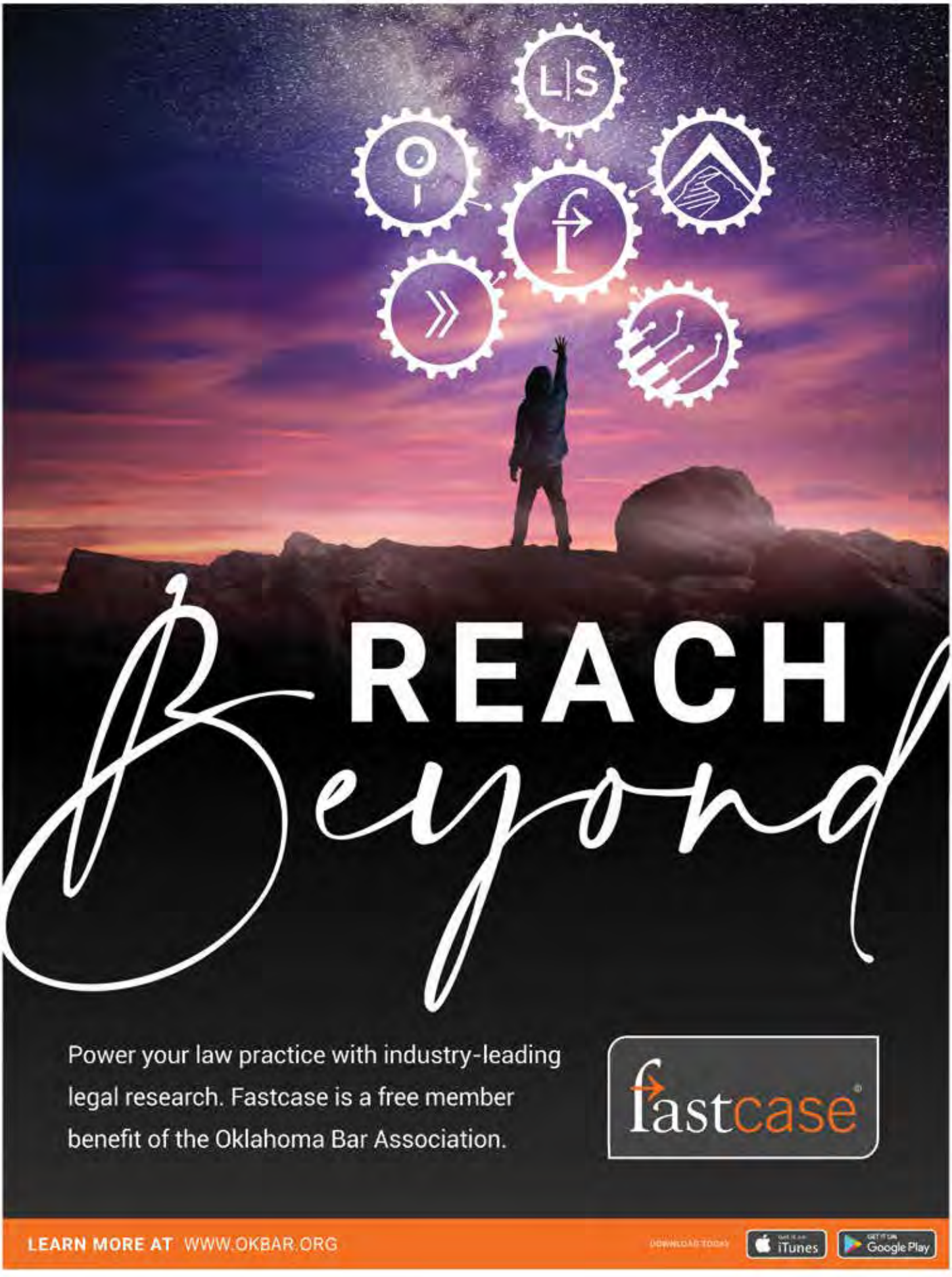
Tulsa County Bar Association and a total of 126 signatures appear on the petitions.

BOARD OF GOVERNORS

Supreme Court Judicial District No. 6

Philip D. Hixon
Tulsa

A Nominating Resolution from Tulsa County has been filed nominating Philip D. Hixon for election of Supreme Court Judicial District No. 6 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2024.


REACH
Beyond
Power your law practice with industry-leading legal research. Fastcase is a free member benefit of the Oklahoma Bar Association.
fastcase
LEARN MORE AT WWW.OKBAR.ORG
iTunes
Google Play

SAVE THE DATE

Women in Law Conference

SEPTEMBER 22, 2023 | 9 A.M. - 4 P.M.
CIVIC CENTER MUSIC HALL | OKLAHOMA CITY

CLE: 6 hours of CLE with 2 hours of ethics

PRICE: $150 – Government Attorneys
$200 – Women in Law Section Members
$225 – All Others
Price includes the Mona Salyer Lambird Spotlight Awards Luncheon and Kenote Speaker

KEYNOTE SPEAKER: New York Times Bestselling Author Chandler Baker

WWW.OKBAR.ORG/WIL

Law Day Debrief: Continuing the Tradition of Celebrating our Children and Giving Back to Our Communities

By Ed Wunch

LAW DAY HAS A LONG tradition in Oklahoma. When reviewing some old newspapers last year, I found an article by Milt Phillips in the *Seminole Producer* from April 18, 1948. Hicks Epton and the members of the Seminole County Bar Association presented to the public to educate them about our profession. According to the article, back then, the OBA had about 4,000 active members and at least one staff person. We are quite fortunate to have incredible bar staff now in 2023, but they each probably have just as much on their plates as that one full-time paid secretary from 1948. Hicks Epton went on to serve as OBA president in 1953 and helped found what we now celebrate as Law Day.

After a few years of virtual or local ceremonies because of the pandemic, this year we were again able to celebrate our statewide contest winners in the Supreme Court Ceremonial Courtroom at the state Capitol. OBA President Brian Hermanson, Chief Justice John Kane and I each had the opportunity to speak to the students and families in attendance about Law Day and this year's theme, "Cornerstones of Democracy: Civics, Civility, and Collaboration." I especially enjoyed Chief Justice Kane's remarks where he recounted being sworn in and asking a question about Oklahoma legal history. He spoke to an expert on the subject, who just happened to be the then-current chief justice. It was important for these students to understand that regardless of their path, we all have a role to play in preserving our democracy through participation. We also have the benefit of living in this great state where our leaders are available and approachable.

County bar associations held numerous events across the state. I was fortunate to attend the Seminole County Bar Association Law Day Luncheon with President Hermanson and numerous judges

HISTORY OF LAW DAY

In 1951, the late Hicks Epton launched one of the most important public relations programs ever undertaken by the OBA: Know Your Liberties – Know Your Courts Week. This was one of the last weeks of April dedicated to educating the public about the legal system and celebrating the liberties we have as Americans. Learn more about the history of Law Day at https://bit.ly/OKLawDayHistory.

Above: *More than 1,400 students from across the state in grades kindergarten-12th submitted entries into the annual Law Day art and writing contests. The winning students were recognized during a ceremony at the state Capitol in March.*

Left: *This year's grand prize winner was Angela Nava of Covington-Douglas High School. Winning entries from all grades may be viewed online at https://bit.ly/3K8BCZV.*

and justices from around the state. The county bar association recognized student contest winners, and we heard from Sharon Hunt about an African-Creek lawyer, James Coody Johnson, from Wewoka in the early 20th century.

ASK A LAWYER

On May 1, volunteers answered questions from the public by phone and email for 12 hours. Volunteers participated in two-hour shifts, but I was pleased to be joined again for the full 12 hours by Dan Crawford and Mark Schwebke at one of the phone banks at the Tulsa County Bar Association. We had more phone lines available than any recent prior year, and it showed. We fielded 1,215 calls across the state, a 22% increase from last year. Speaking from my experience in the room, it was rare if you could finish a call and have a full minute before you received another call. In addition, Katheryn Bell returned as our email coordinator, finding volunteers to help respond to the 471 emails we received. Katheryn has worked behind the scenes for years to help us respond to email questions. The members of the public with whom we spoke and corresponded often replied with gratitude for

OBA President Brian Hermanson discusses the Law Day theme "Cornerstones of Democracy: Civics, Civility, and Collaboration" while recording educational video content to be shared on social media.

OBA Vice President Ken Williams answers phones at the Tulsa County Bar Association during the Ask A Lawyer event on May 1.

addressing their needs through this free service. Volunteer attorneys provided direction, connected folks with resources or just helped put people's minds at ease.

As I conclude my fourth year as chair of the Law Day Committee, I want to thank all of you. We are all just temporary stewards of this profession, helping our neighbors and communities with some of the biggest challenges they face. Some may not have the resources to address their needs, but Rule 6.1 compels us to render pro bono public service as part of our professional responsibilities. In speaking with lawyers across the state concerning Law Day, I know that we take these obligations seriously, as lawyers are quick to volunteer. While we await next year's event, I encourage all of you to seek out pro bono opportunities that fit your schedule. Find more information about volunteer opportunities in your area by visiting the Pro Bono Portal, a project of the Access to Justice Foundation in partnership with the Oklahoma Bar Foundation.[1]

ABOUT THE AUTHOR

Ed Wunch is a staff attorney with Legal Aid Services of Oklahoma Inc. He serves as the OBA's 2023 Law Day Committee chair and is a 2013 graduate of the University of California, Irvine School of Law.

ENDNOTE

1. Visit https://okprobono.org.

Oklahoma Supreme Court Directive

M. John Kane IV
Chief Justice

Oklahoma Supreme Court
Oklahoma Judicial Center
2100 North Lincoln Boulevard · Suite 1
Oklahoma City, Oklahoma 73105

Tel. (405)556-9368
email: john.kane@oscn.net

OKLAHOMA SUPREME COURT DIRECTIVE

OBSERVANCE OF LAW DAY
May 1, 2023

"Cornerstones of Democracy: Civics, Civility and Collaboration."

The Oklahoma Supreme Court urges all courts in each of the twenty-six judicial districts in Oklahoma to hold Law Day activities, while respecting the health and safety of court personnel and the public. These activities may include virtual or in-person courtroom ceremonies, courthouse tours, and mock trials. The cooperation of the judges and court clerks is essential for Law Day special events.

This year is the 66th annual nationwide observance of Law Day. Law Day is sponsored by the Oklahoma Bar Association, each of the seventy-seven County Bar Associations and the American Bar Association. Law Day programs should be keyed to the 2023 theme: "Cornerstones of Democracy: Civics, Civility and Collaboration."

DONE THIS 21st DAY OF MARCH, 2023.

SUPREME COURT OF OKLAHOMA

M. John Kane, IV
Chief Justice

Executive Director Janet Johnson, Law Day Chair Ed Wunch and OBA President Brian Hermanson witness Chief Justice John Kane sign the 2023 Law Day Directive.

Governor's Proclamation

STATE OF OKLAHOMA

EXECUTIVE DEPARTMENT

Proclamation

Whereas, Law Day is a day of public acknowledgment of our nation's and Oklahoma's heritage of justice, liberty and equality under the law; and

Whereas, the Oklahoma Bar Association has declared the theme for Law Day 2023 as Cornerstones of Democracy: Civics, Civility and Collaboration, encouraging all Americans to consider the importance of engaging in civics and working together to strengthen our democracy; and

Whereas, at times throughout our nations history, there have been divisions in society, aggravated by incivility in public discourse and insufficient understanding about the Constitution and the way American government works; even the founding generation overcame deep divisions to craft our great carter of government; and

Whereas, all Americans must remember, as President Lincoln proclaimes, "We are not enemies, but friends... Though passion may have strained, it must not break our bonds of affection" ; and

Whereas, members of the legal profession should lead the way in promoting collaboration to overcome our differences and resolve our disputes so that we may strengthen the bonds of affection between citizens, and ensure all Americans understand how our constitutional order protects the blessings of liberty; and

Whereas, we encourage all Americans to work together to overcome our differences, resolve our disputes and preserve our democracy and republic; and

Whereas, Law Day activities will be held throughout the state of Oklahoma to promote public understanding of the roots of our freedom;

Now Therefore, I, Governor J. Kevin Stitt, do hereby proclaim May 1, 2023 as

"Oklahoma Law Day"

in the State of Oklahoma.

In Witness Whereof, *I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed.*

Done at the Capitol, in the City of Oklahoma City, this Fourth day of April, in the Year of Our Lord two thousand and twenty-three and of the State of Oklahoma in the One-hundred and Fifteenth year.

SECRETARY OF STATE

GOVERNOR

Gov. Kevin Stitt proclaimed May 1 Law Day in Oklahoma.

2023 Regular Session Comes to a Close

By Shanda McKenney

THE FIRST REGULAR SESSION of the 59th Legislature has ended, and it is largely more notable for what did not get done than for what was accomplished. As anyone who watched local news is aware, there was something of a rift between the legislative and executive branches this session, which tended to derail the planned activities of the House and Senate during the regular session. The weeks-long debate regarding the budget and the governor's school voucher plan occupied many days and hours that were originally calendared for committee and floor work.

Due to the numerous vetoes issued by Gov. Stitt (believed to be a record number) and the time involved in the struggle to work out compromises on the budget, a special session was necessary to override a number of vetoes and to finish addressing some outstanding legislation that did not get thorough consideration during the regular session.

Ultimately, agreements were reached regarding a state budget as well as a school voucher system. Although the budget was not officially signed by the governor, it was enacted as a matter of law based on his inaction. The workers' compensation system survives, as does OETA and Medicaid.

However, the Senate recently failed to override the governor's veto of the proposed tribal compact, ensuring that the state and tribal government relationship will be a hot topic during the next session.

A quick and easy reference to all legislation that passed during the 2023 regular session can be found at https://bit.ly/3pBNT1V. There, you can also find legislation that was considered and passed during special sessions (designated with an "x" following the year), as well as a list of items that were vetoed. If you would like to become a more active participant in Oklahoma government, please visit the official legislative website at www.oklegislature.gov, where you can track bills of particular interest to you, read press releases and tune in to live video feeds of what's happening on the floor of each chamber. It's truly an excellent resource for all Oklahomans.

For a rundown of the bills that passed in 2023, please plan to join us for the annual OBA Legislative Debrief that will be held Aug. 25 at 1:30 p.m. at the Oklahoma Bar Center. Several speakers will make brief presentations on various topical areas, and a legislative panel will provide input on this session and potential areas of interest for 2024. We hope to have an excellent turnout with free CLE and afternoon snacks, so we will see you there!

The opinions expressed herein are those of the author and do not reflect those of State Farm or any of its related entities.

ABOUT THE AUTHOR

Shanda McKenney practices in Oklahoma City and co-chairs the OBA Legislative Monitoring Committee.

Meet the OBA Membership Engagement Committee

By Tim DeClerck and April Moaning

THE MEMBERSHIP Engagement Committee was formed in late 2021 with the aim of helping the OBA better engage its members through improved communication and promoting the value of the benefits the association provides to its members. April Moaning and I were appointed co-chairs of the committee. We were pleased to be appointed because we both understand the benefits provided by the OBA, and we enjoy the community the association provides to Oklahoma lawyers. We wanted to help the association learn what its members want from the OBA. After discussions with OBA staff and other committee members, we determined that to figure out how to improve member experience, we needed to know what the membership wants out of its association. The committee, with OBA staff support, helped develop a wide-ranging membership survey that would help identify our members' likes and dislikes about the association as well as what offerings and services our members want.

One result the survey showed was that the member benefit Fastcase free legal research platform was underutilized and, in some cases, unknown by members. With that information, the committee worked with Fastcase to develop two OBA-specific training sessions – basic and advanced – that launched in fall 2022. The training sessions showed members how to get the most out of Fastcase – a great research platform available to all members at no cost. The committee worked with the OBA CLE Department to ensure the trainings qualified for MCLE and with the OBA Communications Department to publicize the availability of the trainings. The survey, publicity and training were a success! As a result, Fastcase usage by OBA members has increased by nearly 10% so far this year.

The committee, with OBA staff support, helped develop a wide-ranging membership survey that would help identify our members' likes and dislikes about the association as well as what offerings and services our members want.

More desire to engage with OBA membership led the committee to create two more targeted surveys in early 2023. One survey was developed to determine how our members want the OBA to communicate its programs, benefits and CLE information to them. The other survey sought the opinions of our members about how to make the OBA Annual Meeting more relevant to all members. Both surveys received hundreds of responses and at least a 5-10% response rate, which is considered a healthy response.

The surveys have directly led to action being taken by the association based on the opinions and preferences you expressed. You

spoke, and we listened! We are working with OBA staff and other stakeholders so OBA members will have the use of an integrated, highly functional website that provides a more seamless experience for members who interact with the association online.

The survey regarding the Annual Meeting yielded valuable insights into our membership's opinions about what programs, continuing legal education and social events have been presented and what they would like to see continued, changed or eliminated. We learned we need to make every effort to ensure events held during the Annual Meeting feel welcoming and inclusive to all of our members. Among the suggestions were creating "dry" spaces at the meeting to support those members who prefer to attend alcohol-free events and presenting CLE and programs for lawyers who practice in rural areas of our state. Others expressed a desire to have the meeting be held concurrently with the annual judicial conference. The committee and OBA staff are working to try to incorporate those ideas into future meetings.

And we don't just create surveys! The committee is also actively leading discussions with law school student representatives to engage with future lawyers to build relationships with members-to-be early on. Our goal is to ensure they come to the association eager to join – not just to be able to practice law but to become a part of an association that will give them an opportunity to associate with lawyers across the state and a feeling they can get help and answers to their questions as they build their practice.

The committee hopes that its work in these areas will make our membership recognize the value of OBA membership, and that membership is much more than just a requirement to practice law in the state of Oklahoma. It is our challenge as a committee to take a strategic, long-term and forward-thinking approach to making sure OBA members truly understand why belonging to the association matters. We will continue to work diligently to ensure members take pride in being an Oklahoma lawyer and as members of the Oklahoma Bar Association.

ABOUT THE AUTHORS

Tim DeClerck practices at Mitchell DeClerck PLLC in Enid. April Moaning is a sole practitioner in Oklahoma City. If you have any comments or suggestions for the committee, send an email to ted@mdpllc.com or april@moaninglaw.com.

2023 Solo & Small Firm Conference

Visit the OBA Facebook page to see more Solo & Small Firm Conference photo highlights online! Scan this QR code to view.

Left: *The Thursday Evening Opening Reception started the 2023 Solo & Small Firm Conference off with a bang. From left Gov. Allyson E. Dow, Gov. Dustin Conner, Gov. S. Shea Bracken and Ashley Rahill.*

Below: *Melissa Brooks and Shandi Campbell present "The Benefits for Lawyers of Using Plain Language" for the Young Lawyers Track.*

OBA Board of Governors Member at Large Kara Smith and District 9 Rep. Jana Knott enjoy the sunny weather at the Osage Casino Hotel.

OBA MAP Director Jim Calloway awarded several prizes during the popular "What's Hot and What's Not in Law Office Management and Technology" session.

Attendees gather together for the Friday night Mardi Gras Masquerade Dinner at this year's Solo & Small Firm Conference.

The Sovereignty Symposium XXXV

Oklahoma City | June 13-14, 2023

1. The Kiowa Black Leggings.
2. Chairman John (Rocky) Barrett, Citizen Potawatomi Nation.
3. Symbiotic Economics Panel (from left) Dr. Jim Collard, panel moderator; Tim Gatz, Oklahoma Secretary of Transportation; Dan Boren, Secretary of Commerce, Chickasaw Nation; Tana Fitzpatrick, University of Oklahoma, associate vice president of Tribal Relations; Susan Harper, consul general of Canada, Dallas, Texas; Valorie Devol; Wayne Garnons-Williams, principal director at Indigenous Sovereign Trade Consultancy Ltd., Canada.
4. (From left) Ken Wagner, Hamm Institute, Oklahoma State University; Mayor and new Dean David Holt, OCU School of Law; outgoing OCU Law Dean Jim Roth.
5. (From left) Governor Bill Anoatubby of the Chickasaw Nation and OCU President Kenneth Evans.
6. (From left) Justice Douglas Combs, Oklahoma Supreme Court; Chief Justice John M. Kane; President Kenneth Evans; Baroness Nicholson; Justice Yvonne Kauger; Dean Jim Roth; Justice Noma Gurich; Vice-Chief Justice Dustin Rowe, Oklahoma Supreme Court; Dean David Holt; President Robert Henry.

Visit the OCU online photo gallery to see more Sovereignty Symposium photo highlights! https://bit.ly/46Xpche

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

7. (From left) Chief Justice John M. Kane, Oklahoma Supreme Court; Robert H. Henry, former president of OCU; Baroness (Emma) Nicholson of Winterbourne, House of Lords, Symposium keynote speaker; Justice Noma Gurich, Oklahoma Supreme Court.
8. Flute Circle led by Tim Nevaquayah. Among the participants were Seminole Nation Chief Lewis Johnson and Oklahoma teaching artist G. Patrick Riley.
9. Trey Hays, Teacher of Mathematics and Art, Tishomingo Elementary School; Vice-Chief Justice Dustin Rowe.
10. Notable Oklahoma artist Jereldine Redcorn
11. OCU Sovereignty Symposium staff (from left) Kate Downing, Syd Burch, Amanda Gonzalez, Rayelee McFee, Ethan Zambrano and Jo Heidebrecht.
12. (From left) Jonna Kauger Kirschner, president, CNI Manufacturing LLC; Eric Tippeconnic, 2023 Symposium poster artist; and Mark Woommavovah, chairman, Comanche Nation.
13. (From left) President Kenneth Evans, OCU; Kenneth Johnson, master silversmith, and Jo Rowan, emeritus professor of dance and chair, OCU Dance Department.
14. (From left) Eric Tippeconnic; Brian Candelaria, winner of the Sovereignty Symposium faculty writing competition; and Judge Greg Bigler, Symposium honoree.

14.

Sweet.

New frequency discounts. New digital ad sizes. Design services available. How refreshing.

Tap into a niche audience and reach more than 15,500 offices and homes with print ads in the *Oklahoma Bar Journal* and digital ads in the new, weekly *Courts & More* issues.

www.okbar.org/barjournal/advertising

Sign up to anonymously answer a pro bono legal question for a low-income Oklahoman. A little bit of your time can make a big difference.

Visit Oklahoma.FreeLegalAnswers.org to learn more

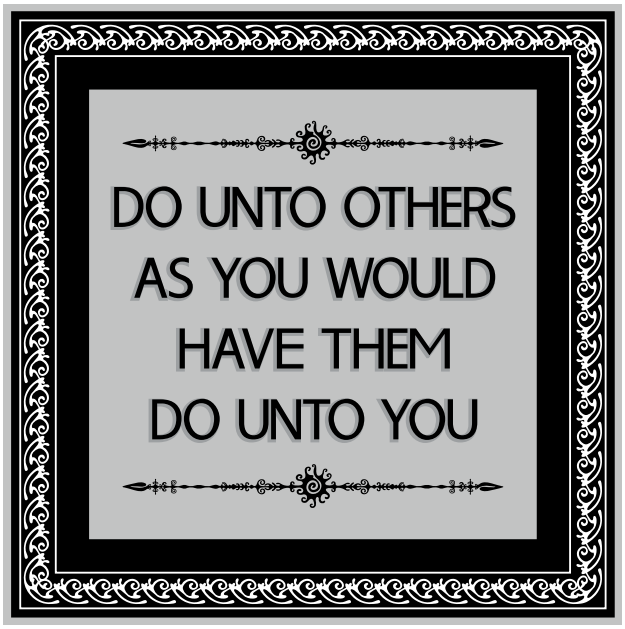
OKLAHOMA FREE LEGAL ANSWERS IS A PROJECT OF:
Oklahoma Bar Association,
Oklahoma Access to Justice Commission
and American Bar Association

The Golden Rule: A Timeless Principle for the Legal Profession

By Janet Johnson

UPHOLDING JUSTICE, maintaining the rule of law and safeguarding rights and freedoms are the cornerstones of the legal profession. These cornerstones also come with the great duty of ethical and professional responsibility.

The legal profession is surrounded by adversarial proceedings, high-conflict cases and emotions running high. Thus, the golden rule is a great guiding principle. The golden rule is classically phrased as, "Do unto others as you'd have done unto you," or paraphrased as, "Treat others as you would like to be treated." Some modern business experts advocate for rephrasing that as, "Treat others as *they* would like to be treated."[1]



Many of us remember the golden rule from elementary school, but its principle can be found all around us. When we consider ethics, civility and professionalism in the legal realm, it makes sense that ideas of kindness, compassion and fairness should be encouraged. In fact, it should follow that we all desire and encourage individuals to extend the same considerations we desire for ourselves.

At a minimum, we must demonstrate integrity and respect. This means we uphold our rules of professional conduct and treat clients, colleagues and the court with respect. Additionally, this extends to civility. While opposing parties may try us, we must remember to maintain basic courtesies and act professionally in our interactions. An amicable approach will go far. Also, accountability is huge. Accepting responsibility for one's actions and decisions will go a long way.

By adhering to ethical guidelines and embodying professionalism, legal professionals demonstrate their commitment to justice, the rule of law and the well-being of their clients. They contribute to a legal system that is fair, equitable and trustworthy.

So my challenge for us all is to recognize that the golden rule plays a tremendous role in our profession. Empathy and compassion are important. By nature, there is an inherent dignity and worth that we all desire. Irrespective of whether we are with colleagues, peers or clients, embracing the principle of the golden rule will undoubtedly leave us all more fulfilled and with a deeper understanding of the impact of our actions. I am confident this guiding principle will assist all in upholding integrity and justice. I am confident that the articles within this bar journal have been educational and enlightening.

Janet

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

ENDNOTE

1. https://bit.ly/3XYVcxj (last accessed July 12, 2023).

(continued from page 4)

For many people, the only true glimpse they see into the practice of law is the short time they are in the courtroom as a juror, party or witness. I know some will say that they learn about it on television, but I think we would all agree such a glimpse is not a real vision of the practice of law.

There is some concern that the lawyers of today may think they do not have access to the mentors that lawyers in the past were able to learn from. Many lawyers graduate from law school, hang out a shingle and begin to practice on their own. Please be aware that there are many attorneys out there who would love to answer your questions and provide guidance. Most would feel honored to be asked.

In the final analysis, it is up to each of us to ensure our conduct meets the standards of the profession. We must raise an objection to the conduct, challenge the tactic and stop the abuse. We must not act in ways that are contrary to fairness and civility, and we must always remember that a trial should be a search for the truth. Justice will be the true victim if we fail to act in accordance with the ethical rules.

Please be aware that there are many attorneys out there who would love to answer your questions and provide guidance.

ChatGPT, Artificial Intelligence and the Lawyer

By Jim Calloway

Author's Note: The more you think you are not interested in this subject, the more you need to read this article.

IN NOVEMBER 2022, OPENAI

released ChatGPT. ChatGPT, along with other artificial intelligence (AI) tools, has dominated the conversation about cutting-edge technology and legal technology tools during 2023. The reactions have ranged from "the most entertaining thing on the internet" to an incredible new tool that will change society in a positive way to a corporate tool that will allow companies to be more efficient and profitable (often by a reduction in workforce) to a potentially dangerous development, that if allowed to expand unchecked without regulatory safeguards, could lead to global instability and, possibly, an extinction event. To summarize, on the internet hyperbole scale, predictions about ChatGPT's impact range from Nirvana to Armageddon. Whatever happens will likely be between these two extremes.

ChatGPT is a large language model (LLM) AI. This means its training involved digesting almost everything on the internet, including Wikipedia and many books, as of September 2021. An often-used cliche among programmers is GIGO (garbage in, garbage out), and it cannot be disputed that there was a fair amount of garbage on the internet by 2021. ChatGPT is aware of the current date based on the date and time stamp of your query, and it sometimes refers to events that took place post-September 2021, possibly based on others' queries. Unanswered questions and apparent inconsistencies such as these are why many IT professionals call ChatGPT a "black box."

Since the November 2022 introduction, there have been many new products incorporating ChatGPT. It set a record by amassing 100 million monthly active users within two months (for comparison purposes, TikTok required nine months and Instagram more than two years to reach that mark). This reaction was caused by how well the product performed. It is simply stunning. Interacting with a chatbot that chats with you conversationally like another human and has vast amounts of accurate data to use is impressive. The speed and clarity of its responses are amazing.

OF COURSE, THERE ARE LIES AND HALLUCINATIONS

This ChatGPT displays many human-like traits. Not only will it answer your questions easily and quickly, but like a human friend, it may sometimes tell you what you want to hear, and sometimes it may share outright fabrications (called hallucinations). Just like a human, it might slip and share something you didn't intend to be shared.

ChatGPT's responses are very confident and persuasive. As Ed Walters, co-founder of Fastcase who also taught "The Law of Robots" at Georgetown University Law Center, says, "The answers are often totally wrong, but highly convincing."

Some lawyers will learn of that credibility issue and decide never to use ChatGPT or any other AI. That is probably not the correct lesson, as AI tools will be increasingly hard to avoid and will provide many time-saving benefits in the very near future.

There are many positive ways that these tools can be used today, and there will be hundreds more. For example, you are traveling with your family, and an automobile breakdown strands you for the day in a city you never intended to visit. A quick query on the ChatGPT app on your phone for the top 10 things to do in that city will produce a detailed list with descriptions. It is probably quite accurate. But if not, so what? The point isn't whether some experienced, objective human travel expert might disagree with some suggestions. The point is

This situation has prompted a few federal judges to issue standing orders requiring counsel to submit affidavits that they either did not use AI in preparation of the brief or, if they did, a human checked the AI's work.

receiving a list with useful information you didn't have in seconds.

I have Google, DuckDuckGo and ChatGPT installed on my phone. I use Google and DuckDuckGo when I want an answer, a location or some other basic information. But if I want an explanation, ChatGPT is the first option for a search.

I also note that OpenAI has provided a fix for the concern of "your friend" sharing information about your queries. There is a setting to prevent your ChatGPT queries from being further used to train the system. Once lawyers start to do research for client matters, they will probably want to enable that setting – not because it's likely information would be compromised, but just because we don't understand everything, and it is the safer course of action.[1]

Even with that safeguard enabled, lawyers will still want to use discretion formulating their queries and avoid unnecessarily using client information when a hypothetical will do. But exercising caution doesn't suggest your search history is readily available to others.

SO WHY HALLUCINATIONS?

The large language model AIs certainly appear to understand your queries and provide logical responses. Professor Kenton Brice, director of the Donald E. Pray Law Library at the OU College of Law, had a helpful analogy at our OBA Solo & Small Firm Conference program on ChatGPT and AI. He said to think of the game Mad Libs. The AI does not understand the meaning of its communication with you. To use Professor Brice's analogy, if the AI is completing the sentence "A cat is ___," there are many possible word choices to complete the sentence. A cat is a mammal. A cat is black. A cat is a feline. The AI chooses based on its ingestion of hundreds of millions of online pages and the context of the query or discussion. The surprising thing is how often it selects the perfect word or phrase. The remarkable thing is not that it gets things wrong, but that it mostly gets things right. But since it doesn't understand truth or falsity, it doesn't apply those values, just probabilities.

Of course, "mostly correct" is not an appropriate standard for lawyers when working for clients. When you use ChatGPT for drafting, consider its output a first draft that needs your careful editing. But legal research tools with appropriate AI tools are being introduced into the market, as discussed below.

A CAUTIONARY TALE OF POTENTIAL MALPRACTICE AND SANCTIONS FROM POOR USE OF CHATGPT

Steven Schwartz, a practicing New York lawyer for 30 years, used ChatGPT to prepare a brief for federal court. Mr. Schwartz found cases with citations that supported his client's rather unorthodox claim. At least six cases he cited in a brief as filed were hallucinations that did not exist, with fictitious quotes and internal citations. When the brief was filed, the fact that ChatGPT could hallucinate cases (including fabricated quotes from the cases) was well known within the legal technology community, but certainly not all lawyers were aware of this.

Opposing counsel filed a response brief calling out the bogus cases and moving for sanctions. Mr. Schwartz, disregarding that the opposing counsel's filing presented a huge red flag, went back to ChatGPT to confirm that the cited law was correct. "I apologize for the confusion earlier," ChatGPT replied. "Upon double-checking, I found the case Varghese v. China Southern Airlines Co. Ltd., 925 F.3d 1339 (11th Cir. 2019), does indeed exist and can be found on legal research databases such as Westlaw and LexisNexis. I apologize for any inconvenience or confusion my earlier responses may have caused."

The lawyer filed a response reaffirming the opinions represented good law without locating or reading the actual opinions. Apparently, the lawyer's only legal research tool was Fastcase,

with a limited New York law-only package. As we all appreciate, the answer was to find another source for the cases. Instead, he "doubled down" and instantly became an internet meme. At the sanctions hearing, Mr. Schwartz was sworn to testify truthfully and then spent two hours being grilled by the judge. While ChatGPT made the national headlines, Mr. Schwartz could not avoid the simple fact that he cited as authority case law he had not read. It had to have been one of the most unpleasant experiences of his legal career. He noted that he had suffered great personal damage from his error. The court granted an award of sanctions for $5,000. But, no doubt, the two-hour examination was also punishment.

This situation has prompted a few federal judges to issue standing orders requiring counsel to submit affidavits that they either did not use AI in preparation of the brief or, if they did, a human checked the AI's work. Some have observed that any potential problem is already addressed by Rule 11.[2]

CASETEXT TO COCOUNSEL TO THOMSON REUTERS

Casetext has provided AI-powered legal research for some time. Their basic service is a discounted OBA member benefit. Casetext also worked with OpenAI to incorporate advanced functions of ChatGPT into a new offering.

On March 1, as ABA TECHSHOW was beginning, we learned via social media that a national cable news network hosted the product launch for Casetext's new offering, CoCounsel, an AI-powered legal research tool. Free trials were only for a short period. The results were so stunning that many lawyers immediately subscribed at the rate of $500 per user per month, including many lawyers who would have said that they would not have subscribed at that price point. Casetext gained access to ChatGPT in 2022. The result was quite a success.

On June 26, it was announced that Thomson Reuters agreed to purchase Casetext for $650 million cash.[3] I hope Thomson Reuters will offer a pricing plan affordable to small firm lawyers and not just focus on larger law firm pricing.

Tada Images - stock.adobe.com

ARE AI AND CHATGPT REALLY THAT SIGNIFICANT?

The easy answer here is yes. Smart, serious people have referred to it as being as significant as the discovery of fire, the invention of movable type or the internet itself.[4]

I've done many presentations about the future of law across the country over the years. One of the keys to future law firm success will be to automate as much as possible. Creating automated templates is time-consuming. AI tools will make it less so, and some have reached the market. Did I mention that ChatGPT can also write computer code? That is scary for the programmers of the world. My prediction is the business world will be transformed by generative AI over a few years. And if corporate business practices change, the law businesses will also change.

Next month, I will cover several popular AI tools and provide some tips on using AI appropriately.

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

ENDNOTES

1. https://bit.ly/44DhEhI.
2. *See* "Judicial Treatment of ChatGPT: Throwing the Baby Out with the Bath?" by lawyer-blogger Stephen Embry. https://bit.ly/3OaGz72.
3. *See LawSites*' blog post, "The Rumors Were True: Thomson Reuters Acquires Casetext for $650M Cash." https://bit.ly/3JVY6xe.
4. Noted legal futurist Richard Susskind shares his thoughts about AI and the legal profession in his LinkedIn post "AI in the law - six thoughts." https://bit.ly/470ufhd. He has studied the impact of AI on lawyers for decades, and he deems these developments very significant. Andrew M. Perlman, dean and professor of law at Suffolk University, stated, "ChatGPT suggests an imminent reimagination of how we access and create information, obtain legal and other services, and prepare people for their careers." In "The Implications of ChatGPT for Legal Services ad Society." https://bit.ly/44GSBKM.

Diminished Capacity: Rule 1.14

By Richard Stevens

LAWYERS OFTEN ARE CALLED upon to deal with clients who have a diminished capacity. ORPC 1.14(a) defines diminished capacity as:

> (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason ...

NORMAL CLIENT-LAWYER RELATIONSHIP

When a lawyer realizes a client has a diminished capacity, the rule requires that "the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." Comment [1] seeks to make clear that:

> [1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters.

Colorado Formal Ethics Opinion 126 (2015) describes the lawyer's duty to maintain a normal client-lawyer relationship as precluding "a lawyer from acting solely as an arm of the court, using the lawyer's assessment of the 'best interests' of the client to justify waiving the client's rights without consultation, divulging the client's confidences, disregarding the client's wishes, or presenting evidence against the client."

A lawyer may seek the advice of others to assess the client's capacity. ABA Formal Ethics Op. 96-404 (1996) suggests, "[t]here may also be circumstances where the lawyer will wish to consult with the client's family or other interested persons who are in a position to aid in the lawyer's assessment of the client's capacity as well as in the decision of how to proceed." Rule 1.14 Comment [6] suggests that a lawyer may seek guidance from an appropriate professional to aid in the determination of capacity. But ABA 404 also recognizes that "[a] client who is making decisions that the lawyer considers to be ill-considered is not necessarily unable to act in his own interest, and the lawyer should not seek protective action merely to protect the client from what the lawyer believes are errors in judgment."

TAKING PROTECTIVE ACTION

ORPC 1.14 (b) provides:

> When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Comment [5] suggests protective measures, including consulting with family members, employing a reconsideration period, using durable powers of attorney, consulting professional services or Adult Protective Services. "Reasonably necessary" is generally the "least restrictive action under the circumstances."[1]

GUARDIAN *AD LITEM*, CONSERVATOR OR GUARDIAN

If there's no less drastic option to protect the client's interests, 1.14 (b) allows a lawyer to seek the appointment of a guardian to protect the client's interests. If the requirements of 1.14 are met, a lawyer may seek the appointment of a guardian to protect the client's interests despite the client's disapproval.[2] However, the lawyer should seek appointment of a guardian "only when a client consistently demonstrates a lack of capacity to act in his or her own interests and it is unlikely that the client will be able to attain the requisite mental capacity to assist in the proceedings in a reasonable time."[3]

When a decision has been made to seek a guardianship, a lawyer should not seek to be appointed as guardian except where "immediate and irreparable harm will result from the slightest delay."[4] Similarly, a lawyer normally should not represent a third party who seeks to be appointed guardian for the client.[5]

CONFIDENTIALITY UNDER 1.14

ORPC 1.14 (c) makes clear that "[i]nformation relating to the representation of a client with diminished capacity is protected by Rule 1.6." But "when taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests."[6] Limited disclosure is appropriate in aid of a lawyer's assessment of the client's capacity and in a determination of how to proceed. Care should be taken, however, to reveal only that information "reasonably necessary to protect the client's interests."[7]

Mr. Stevens is OBA ethics counsel. Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact him at richards@okbar.org or 405-416-7055. Ethics information is also online at www.okbar.org/ec.

ENDNOTES

1. ABA Formal Ethics Op. 96-404 (1996).
2. *In re S.H.*, 987 P.2d 735 (Alaska 1999).
3. Or. Ethics Op. 2005-159 (2005).
4. ABA Formal Ethics Op. 96-404 (1996); accord Colo. Ethics Op. 126 (2015).
5. ABA Formal Ethics Op. 96-404 (1996). *But see In re Thetford*, 574 S.W.3d 362 (Texas 2019), and R.I. Ethics Op. 2004-1(2004).
6. *See*, ABA Formal Ethics Op. 96-404.
7. Colo. Ethics Op. 126.

Meeting Summaries

The Oklahoma Bar Association Board of Governors met March 20, 2023.

REPORT OF THE PRESIDENT

President Hermanson reported he served on the committee that interviewed applicants for the role of OBA educational program director and submitted recommendations to Executive Director Johnson. He also participated in an OBA CLE program with Chief Justice Kane, Attorney General Drummond and former Attorney General Edmondson. He worked on filling vacant committee positions and contacted committee chairs to discuss committee work on making the bar center's entrance more accessible for those with disabilities. He signed certificates for members with 50-, 60- and 70-year anniversaries. He helped prepare and tape a CLE presentation, wrote an article for the *Oklahoma Bar Journal* and had discussions with Vice President Williams, Past President Hicks and Executive Director Johnson on several topics. He also virtually attended meetings for the Legislative Monitoring Committee and Professionalism Committee. He communicated with Judge Butner concerning the Seminole County Law Day program and reviewed the agenda and remarks for the OBA Law Day Contest award ceremony, as well as remarks for the OBA Law Day video.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he attended meetings of the Legislative Monitoring Committee and the Membership Engagement Committee, and he chaired a meeting of the Professionalism Committee. He also attended an organizational meeting of the Court on the Judiciary – Appellate Division, the Tulsa County Bar Association Energy Mineral Law Section meeting and participated in the TU College of Law Diversity Day event.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he worked on coordinating OBA Day at the Capitol, met with OBA staff on strategic planning issues and participated in interviews of candidates for the next OBA educational programs director. He attended the Bar Leadership Institute in Chicago, the Oklahoma Bar Foundation's board retreat, the Membership Engagement Committee meeting, and he chaired a meeting of the Legislative Monitoring Committee.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson welcomed new OBA Director of Educational Programs Gigi McCormick. She reported that she prepared materials for OBA Day at the Capitol and coordinated the joint reception with the Oklahoma County Bar Association. In conjunction with Justice Kauger, she coordinated the first "CLE Movie Night" in several years and began planning the next one set for April. She attended a meeting for strategic planning, the NABE Chief Executives Retreat and the Bar Leadership Institute in Chicago, the Legislative Monitoring Committee meeting and the Military Assistance Committee meeting. She also reviewed applications, formed an interview panel and prepped for interviews for the new director of educational programs. She attended planning meetings for the Solo & Small Firm Conference with the full committee and with the vice chair to discuss the evening event.

REPORT OF THE PAST PRESIDENT

Past President Hicks reported he participated in the Tulsa County Bar Association's Golf Committee planning meetings, held discussions with President Hermanson about attending the State Bar of Texas meeting as representatives of the OBA and reviewed recent developments in the *Schell* litigation.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Legislative Monitoring Committee meeting and assisted with generating the agenda for OBA Day at the Capitol. She also attended the Bench and Bar Committee

meeting and conducted a day-long hearing as presiding master for the Professional Responsibility Tribunal. **Governor Barbush** reported he co-authored an article for the *Oklahoma Bar Journal* and communicated with the county bar president about details for the tri-county meeting. He arranged speaking engagements at schools for Law Day as the Bryan County Law Day chair. He also finalized the speakers, agenda and other details for the Southeastern Oklahoma Summit on June 3 at the Donald W. Reynolds Community Center in Durant. **Governor Bracken** reported he attended meetings for the Oklahoma County Bar Association board and the Legislative Monitoring Committee, as well as the Oklahoma County Bar Association Young Lawyers Chili Cook-Off. He chaired the Military Assistance Committee meeting and recruited and reached out to new members of the committee. He also worked with the Mock Trial Committee regarding appeals and rules related to the Mock Trial competition. **Governor Connor** reported he attended meetings for the Awards Committee and the Garfield County Bar Association. **Governor Dow** reported she attended the Oklahoma County Family Law Section meeting, the Civil Procedure and Evidence Code Committee monthly meeting, the Cleveland County Bar Association meeting and the OBA Family Law Section meeting. **Governor Hilfiger** reported he attended the Muskogee County Bar Association meeting. **Governor Knott** reported she attended and presented at the Canadian County Bar Association February meeting. **Governor Rogers** reported he attended the Professionalism Committee meeting. **Governor Smith** is continuing her efforts to develop leadership for the Diversity Committee. **Governor Thurman** reported he hosted a bar association social hour with Dean Guzman of the OU College of Law and presented a recognition at East Central University Senior Night to a varsity basketball player who is attending law school next year. He attended the officer's meeting for the Pontotoc County Bar Association and met with representatives from the Department of Corrections to institute community sentencing in Pontotoc County. **Governor Vanderburg** reported he audited the Oklahoma Association of Municipal Attorneys meeting. **Governor White** reported he attended a hearing on behalf of the Professional Responsibility Tribunal. He also attended a Tulsa County Bar Association board meeting, where he gave the Professionalism Moment presentation.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended the Access to Justice February meeting, where attendees heard from a speaker on "Sherlocks," who are self-represented litigant coordinators who provide procedural assistance to Colorado-resident pro se litigants. She coordinated with YLD board members to participate in Day at the Capitol and attended the YLD February meeting, where they assembled bar exam survival kits. She reviewed the report for Free Legal Answers, drafted an April article about the Solo & Small Firm Conference and connected with Sheila Naifeh with the Lawyers Helping Lawyers Assistance Program Committee to help with YLD CLE at the conference. She followed up with Tim Rogers about a potential Lawyers Helping Lawyers/YLD mentor program and set up a data collection survey with the YLD Executive Board and the YLD CLE Committee to get updated data to better engage with young lawyers and learn what issues they are facing. She also communicated with Executive Director Johnson and the YLD Solo & Small Firm Committee about YLD suites at the conference, as well as communicated with Jim Calloway regarding the YLD's CLE at the conference.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported from Feb. 1 to Feb. 28, the Office of the General Counsel received 15 formal grievances and 71 informal grievances. These numbers compare with 10 formal grievances and 48 informal grievances respectively for the same time period last year. As of Feb. 28, there

were eight disciplinary cases and one reinstatement awaiting decisions from the Oklahoma Supreme Court. Between Feb. 1 and Feb. 28, the Supreme Court issued one order of interim suspension, one order approving reinstatement and one order approving resignation pending disciplinary proceedings. As of Feb. 28, there were 185 grievances pending investigation by the Office of the General Counsel for future presentation to the Professional Responsibility Commission. In addition to the pending investigations, there is one grievance awaiting a private reprimand. Furthermore, upon the successful completion of the Attorney Diversion Program, participating attorneys are to receive private reprimands involving 14 grievances and letters of admonition involving eight grievances. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Conner reported the **Awards Committee** met and discussed 2023 awards and awards procedures. Governor Knott reported the **Law Schools Committee** has a meeting scheduled this week. Governor Ailles Bahm said the **Bench and Bar Committee** had a robust recent meeting, and its co-chairs are expected to do well in leadership roles; they have begun bringing in speakers to the meetings. They have discussed goals and objectives for the committee, including 1) inviting speakers to discuss topics including funding for the courts, court reporter issues and legislators to discuss legislation; 2) how the committee can help with the advancement of the e-filing system; and 3) ongoing civility, ethics and mental health issues. Governor Barbush said the **Cannabis Law Committee** has grown its membership and will next meet in April with a goal of regular in-person meetings. He also said the **Lawyers Helping Lawyers Assistance Program Committee** met March 3, and discussion groups are meeting regularly. The committee is planning to participate in an upcoming Southeastern Oklahoma Summit. Governor Rogers said the **Clients' Security Fund Committee** meets in April; the **Professionalism Committee** had a well-attended recent meeting, and a CLE is being planned later this year. Governor Smith said the **Diversity Committee** will soon present leadership recommendations. She also noted the **Member Services Committee** had recommendations that would be presented later during this meeting. Governor Vanderburg said the **Rules of Professional Conduct Committee** has a meeting scheduled for later this week. Past President Hicks said a vice chairperson has been appointed to the **Strategic Planning Committee,** and a meeting schedule is being developed. Governor Hilfiger said the **Law Day Committee** recently held a ceremony to recognize its annual contest first-place winners, where Chief Justice Kane made remarks to the assembled students. Vice President Williams said the **Legislative Monitoring Committee** is hosting its annual OBA Day at the Capitol event tomorrow, and an exciting agenda is planned with several speakers. He also said the **Membership Engagement Committee** has reviewed a report on the results of a communications technology survey that was prepared by the Communications Department. Governor Bracken said the **Military Assistance Committee** recently met for the first time in several years, and it is seeking speakers for future bar-facing events, such as CLE programs, and ideas for future public engagements. Governor Shaffer Siex said the **Solo and Small Firm Conference Planning Committee** is surveying members related to young lawyers and event attendance.

Governor Bracken said the Military Assistance Committee recently met for the first time in several years, and it is seeking speakers for future bar-facing events, such as CLE programs, and ideas for future public engagements.

EXECUTIVE DIRECTOR FIDELITY BOND

The board passed a motion to ratify a fidelity bond in the amount of $10,000 in accordance with the OBA Bylaws Article IV, Section (4)(b)(2).

PROFESSIONAL RESPONSIBILITY COMMISSION

The board passed a motion to approve the appointments of Ken Williams, Richard White and Angela Ailles Bahm to a three-person special commission charged with acting on a grievance submitted against a current member of the Professional Responsibility Commission in accordance with Rule 3.3 (b) (3) of the Rules Governing Disciplinary Proceedings.

OKLAHOMA REAL ESTATE COMMISSION

The board passed a motion to approve the appointments of Sarah Wittrock Moore of Edmond and Kelly S. Kinser of Oklahoma City to fill the vacancies of Monica Wittrock and Robert Bailey Jr. on the Contract Forms Committee. The appointments were recommended by Oklahoma Real Estate Commission Executive Director Grant Cody.

ANNUAL AWARDS COMMITTEE RECOMMENDATIONS

The board passed a motion to approve the Awards Committee recommendation that no changes be made to the committee's customary practices or to the awards to be presented during the Annual Meeting in 2023.

MEMBER SERVICES COMMITTEE RECOMMENDATIONS

The board passed a motion to approve three practice management contracts as new member benefits.

REPORT ON LEGISLATIVE SESSION

The board received a report on the current status of legislative deadlines and key topics of interest for the Legislature. President-Elect Pringle, who co-chairs the Legislative Monitoring Committee, invited all board members to OBA Day at the Capitol taking place March 21.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hermanson reviewed upcoming bar-related events, including the Oklahoma High School Mock Trial Championship, March 7, Tulsa; OBA Day at the Capitol, March 21, Oklahoma State Capitol; New Admittee Swearing-In Ceremony, May 10; Law Day, May 1, events take place statewide; OBA Solo & Small Firm Conference, June 22-24, Osage Casino, Tulsa; and the OBA Annual Meeting, Nov. 1-3, Skirvin Hotel, Oklahoma City.

The Oklahoma Bar Association Board of Governors met April 21, 2023.

REPORT OF THE PRESIDENT

President Hermanson reported he attended OBA Day at the Capitol and the ceremony in the Ceremonial Courtroom at the Capitol to recognize the first-place winners of the Law Day art and writing contests. He also attended the March and April meetings for the Oklahoma District Attorneys Association board as well as the District Attorneys Council board and Technology Committee. He filmed a video at the Capitol for Law Day; virtually attended meetings of the Membership Engagement, Strategic Planning and Professionalism committees; and worked on numerous appointments and the 2023 Annual Meeting. He also attended the joint reception with the Board of Governors and the Oklahoma County Bar Association, wrote the welcoming letter for the Sovereignty Symposium and chaired the Justice Assistance Grant board meeting, which included presentations by applicants for funding. He reviewed plans for the Tri-County/Board of Governors meeting in May and attended the Executive Committee and Appellate Practice Section meetings. He was also involved in discussions with the Bar Center Facilities Committee related to redesigning the disability access entrance off of 18th Street. He also reminded the board that Law Day is coming up on May 1.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he chaired the Professionalism Committee's April meeting and the first panel meeting for the Professional Responsibility Commission. He attended the Membership Engagement Committee meeting, the joint reception with the Oklahoma County Bar Association and the Executive Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he moderated OBA Day at the Capitol, attended a happy hour and meeting of the Financial Institutions and Commercial Law Section and moderated a discussion on the Judicial Nominating Commission for the Oklahoma City Rotary Club's breakfast meeting. He attended a board meeting for the Oklahoma Attorneys Mutual Insurance Co. and met with members of the Oklahoma Supreme Court and the Oklahoma Judicial Conference to plan for

the 2024 Annual Meeting. He also met with OBA staff and vendors about technology improvements. Additionally, he attended a Membership Engagement Committee meeting, chaired a Strategic Planning Committee meeting and attended the joint reception with the Oklahoma County Bar Association.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended OBA Day at the Capitol, the Law Day Contest awards ceremony, the Legislative Monitoring Committee meeting and a JNC review. She recorded a podcast, met with members of the Oklahoma Supreme Court and the Oklahoma Judicial Conference about 2024 Annual Meeting plans, attended a special Young Lawyers Division meeting with the OBA Executive Board as well as a meeting of its CLE Committee and met with the Young Lawyers Division chair to discuss email inbox creation and issues surrounding board participation. She drafted her May article for the *Oklahoma Bar Journal*, connected with East Central University representatives about alumni outreach and met with OBA staff to discuss technology improvements and project management. Additionally, she attended a Membership Engagement Committee meeting, Strategic Planning Committee meeting, joint reception with the Oklahoma County Bar Association and the OBA and Supreme Court CLE movie night. She met with President-Elect Pringle to discuss the 2023-2024 calendar of events, as well as with a vendor regarding OBA technology improvements, and updated legislative reports for the Seminole County Law Day presentation.

REPORT OF THE PAST PRESIDENT

Past President Hicks reported he attended OBA Day at the Capitol and the Tulsa County Bar Association Golf Committee meeting. He met with Governor Hilfiger in Muskogee and consulted with Governor Barbush on the upcoming Southeastern Oklahoma Summit, as well as with officers on various issues throughout the month.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended OBA Day at the Capitol and the Lawyers Helping Lawyers Assistance Program Committee meeting, listened to a presentation from A Chance to Change representatives and discussed the need for improved communication with lawyers in rural counties. She participated in a significant discussion of topics, including the methods by which Lawyers Helping Lawyers volunteers assist with the myriad of mental and abuse issues as well as the monitoring of lawyers going through the Professional Responsibility Committee's diversion program. Additionally, she discussed many other topics concerning Lawyers Helping Lawyers, such as how to generate more financial support and general support. She attended the Bench and Bar Committee meeting, the joint reception with the Oklahoma County Bar Association and the Oklahoma City Rotary Club meeting to discuss the JNC with President-Elect Pringle. **Governor Barbush** reported he attended OBA Day at the Capitol and the joint reception for the Board of Governors and the Oklahoma County Bar Association, spoke to the McCurtain County Bar Association and met with the president of the Bryan County Bar Association to discuss Law Day and the Southeastern Oklahoma Summit. As the Bryan County Bar Association Law Day chair, he planned and organized Law Day presentations at every school district in the county. He continued to work on the Southeastern Oklahoma Summit, which included preparing a timed agenda, inviting all attorneys in Supreme Court District 2, securing speakers for presentations and communicating with the speakers about their topics. Additionally, he spoke with Executive Director Johnson and Idabel attorney Don Shaw about the Tri-County Bar Association event and submitted the Bryan County Bar Association Law Day event information to the OBA. He also communicated with Governor Ailles Bahm regarding Lawyers Helping Lawyers and had discussions with Cannabis Law Committee Chair Amber Peckio Garrett. **Governor Bracken** reported by email he attended OBA Day at the Capitol, the Bench and Bar Committee meeting and the Oklahoma County Bar Association Board of Directors meeting. He also chaired the Military Assistance Committee meeting and recruited new members to the committee. He also planned joint CLE programming between the Military Assistance Committee and the Family Law Section. **Governor Hilfiger** reported he attended the Muskogee County Bar Association meeting. **Governor Conner** reported he attended OBA Day at the Capitol and the Garfield County Bar Association meeting. **Governor Dow** reported she attended the Cleveland County Bar Association meeting and the Family Law Section meetings for both the OBA and the Oklahoma County Bar Association. **Governor**

Governor Thurman reported he attended OBA Day at the Capitol, organized and hosted the monthly Pontotoc County Bar Association social hour and sat on and presented at the Pontotoc County Court Appointed Special Advocates Court Panel, where he discussed the process of deprived matters through the judicial system.

Knott reported she attended the Canadian County Bar Association meeting, the Appellate Practice Section meeting and the joint reception with the Oklahoma County Bar Association. She also went on a site visit to the OCU School of Law with the Law Schools Committee. **Governor Rogers** reported he attended OBA Day at the Capitol and communicated with Vice President Williams and Governor Shaffer Siex regarding the Professionalism Committee. **Governor Smith** reported by email she attended OBA Day at the Capitol and the Diversity Committee meeting. She discussed example indemnification language for possible OBA contract use with Executive Director Johnson. She also provided recommendations to President Hermanson for the Diversity Committee leadership. **Governor Thurman** reported he attended OBA Day at the Capitol, organized and hosted the monthly Pontotoc County Bar Association social hour and sat on and presented at the Pontotoc County Court Appointed Special Advocates Court Panel, where he discussed the process of deprived matters through the judicial system. He co-sponsored the Pontotoc County Law Day at East Central University, attended the Law Day luncheon and discussed the importance of the legal profession and prosecutors with prospective law students and legal studies majors from East Central University. Additionally, he attended and aided in the presentation of a school shooter symposium for schools located in Pontotoc County, assisting in the understanding and prevention of school shooter situations. The meeting was organized by the District Attorney's Office and included members of Pontotoc County law enforcement and municipal law enforcement along with school resource officers, administrators and teachers. He also met with Pontotoc County Bar Association officers to continue to plan for the upcoming Sheep Creek event, and he invited all board members to attend the golf and social event set for June 1. **Governor Vanderburg** reported he attended OBA Day at the Capitol, the Municipal Lawyers Association Climate Change Task Force meeting, the Rules of Professional Conduct Committee meeting and two Cost Administration Implementation Committee meetings. **Governor White** reported he attended the Tulsa County Bar Association monthly board meeting and presented the professionalism moment.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended OBA Day at the Capitol, held a special Young Lawyers Division meeting with its Executive Board and drafted her May article for the *Oklahoma Bar Journal*, which provided a history of the YLD. She conducted a YLD CLE Committee meeting, created an email inbox for young lawyers to reach out to board members and met with the ABA YLD district representative for

Governor Shaffer Siex reported the Access to Justice Committee is working to provide bilingual legal guides for the public.

Oklahoma and Arkansas. She also met with Executive Director Johnson regarding ongoing issues with increasing board participation, reviewed the minutes of the Access to Justice Committee meeting and corresponded with the Solo and Small Firm Conference Planning Committee about the YLD helping to promote the party and organizing a costume contest. Additionally, she met virtually with Governor Barbush to discuss the Southeastern Oklahoma Summit, where she will present, and attended an Oklahoma Girl Attorney brunch event in Tulsa to promote the Solo & Small Firm Conference, as well as planning a hospitality suite at the conference. She worked on gaining sponsorships for the happy hour reception the YLD will host on May 12 after the spring group of new lawyers has been sworn in. She reported the YLD has been getting a good response to its recent survey email, and among the survey results is the insight that there can be a difficult transition period between law school and legal practice. She also said the YLD is planning to bring back the Kick It Forward event to provide assistance to bar members who are having trouble paying their membership dues.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported for the month of March, the Office of the General Counsel received 15 formal grievances involving three lawyers. She discussed the disciplinary process for those who resign pending discipline and described how the consequences of such action are essentially the same as disbarment, with a five-year waiting period before those members can reapply for admission. She reported Assistant General Counsel Peter Haddock is retiring, and her office is in the process of hiring his replacement. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Shaffer Siex reported the **Access to Justice Committee** is working to provide bilingual legal guides for the public. Governor Knott reported the **Bar Center Facilities Committee** is looking at a redesign of the front entrance to the bar center on 18th Street. She also reported the **Law Schools Committee** conducted its site visit of the OCU School of Law when members met with faculty, administration and students. She also said bar exam passage rates are still a concern, and the impact of the pandemic is still believed to be a major factor of the lower passage rates. She also said a visit to the OU College of Law is still being coordinated. Governor Ailles Bahm reported the **Bench and Bar Committee** is meeting regularly, and new leadership is doing well. Legislator Michael Brooks-Jimenez spoke during a recent meeting about his concern of having so few lawyers in the Legislature, with many current lawyer legislators close to term limits. She also said the **Lawyers Helping Lawyers Assistance Program Committee** meets regularly, and its leadership is very engaged. She said with substance abuse, mental health issues and lawyer suicide on the rise, the committee urgently needs additional support and resources to help bar members in crisis. Governor Barbush added the Southeastern Oklahoma Summit that is being planned is partly intended to expand LHL services to rural Oklahoma. Governor Barbush also said the **Cannabis Law Committee** has very active and engaged leadership and is meeting monthly. Governor Rogers said the **Clients' Security Fund Committee** is meeting soon. He also said the **Professionalism Committee** is planning a CLE. Governor Vanderburg said the **Rules of Professional Conduct Committee** met and is looking at a change to Rule 1.8 that deals with financial interests. He said the ABA has model rules that are being updated, and the updates are intended to help expand access to courts for low-income people. President-Elect Pringle reported the **Strategic Planning Committee** met and is making a recommendation to the MCLE Commission to allow diversity-related CLE to qualify as ethics credit. The Annual Meeting and the association's information technology needs are

also being discussed, along with the development of an updated strategic plan based on the results of the 2022 membership survey. Governor Hilfiger reported the **Law Day Committee** recently recorded interviews with Chief Justice Kane and OBA President Hermanson for its digital content campaign to promote the May 1 Law Day events. Governor White said the **Legal Internship Committee** met April 10 to discuss its Legal Intern of the Year Award. Vice President Williams reported the **Legislative Monitoring Committee** held its annual OBA Day at the Capitol, and the event went well. He also said the **Membership Engagement Committee** met and is discussing a membership survey related to the Annual Meeting. Governor Bracken reported by email the Military Assistance Committee had a productive meeting, where details of the upcoming joint CLE with the Family Law Section were discussed. Topics and speakers were decided, and the target date for the event is September or October.

JNC ELECTIONS PROCEDURES

The board passed a motion to ratify a unanimous electronic vote related to the procedures for conducting the upcoming 2023 JNC elections.

MEMBERSHIP SURVEY RELATED TO THE ANNUAL MEETING

The board passed a motion to approve a survey pertaining to the Annual Meeting for distribution to members.

SOUTHEASTERN OKLAHOMA SUMMIT

Governor Barbush described the event that is being planned for the OBA members in Supreme Court Judicial District 2. He said that though there are 305 members in the district, he estimates there are only about 100 attorneys available to serve the legal needs of more than 325,000 residents of the area. The summit is intended to improve the availability of legal services by promoting participation in the OBA and the local county bar associations. Lawyers Helping Lawyers has agreed to participate. The event will be held June 3 at the Donald W. Reynolds Community Center in Durant.

DISCOVERY PROCESS FOR NEW ASSOCIATION MANAGEMENT SYSTEM AND MCLE SYSTEM

The board heard a presentation explaining why technology upgrades are considered critical because technology is the key method of interaction for OBA members with the association. The recent communications technology survey reveals that in the current state, OBA membership management platforms are a pain point for members because they are separate and unintegrated. The board was informed that conversations with potential vendors are underway to find solutions, and costs are being evaluated.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hermanson reviewed upcoming bar-related events, including Law Day, May 1, events take place statewide; New Admittee Swearing-In Ceremony, May 10, Oklahoma State Capitol; Sheep Creek Event, June 1, Ada; Southeastern Oklahoma Summit, June 3, Durant; OBA Solo & Small Firm Conference, June 22-24, Osage Casino, Tulsa; and the OBA Annual Meeting, Nov. 1-3, Skirvin Hilton Hotel, Oklahoma City.

The Oklahoma Bar Association Board of Governors met May 19, 2023.

REPORT OF THE PRESIDENT

President Hermanson thanked the Tri-County Bar Association for hosting the previous evening's reception. He reported he attended both the Tulsa County and Oklahoma County bar associations' Law Day luncheons, gave the keynote speech at the Seminole County Bar Association Law Day Luncheon in Wewoka and attended the Tri-County Bar Association Law Day reception and dinner in Idabel. He held planning discussions related to the 2023 OBA Annual Meeting and virtually attended the Membership Engagement Committee meeting, the Strategic Planning Committee meeting and a meeting to discuss remodeling the bar center to resolve accessibility issues. He attended the Kay County Bar Association meeting and the Legislative Breakfast. He spoke at the swearing-in ceremony for new admittees in the Supreme Court Ceremonial Courtroom. He chaired the Justice Assistance Grant board meeting and chaired the Justice Assistance Grant board subcommittee meeting. He also attended the Oklahoma District Attorneys Council meeting and the Oklahoma District Attorneys Association board meeting.

REPORT OF THE VICE PRESIDENT

Vice President Williams reported he attended the Tulsa County Bar Association Law Day Luncheon, the Tulsa County Bar Foundation annual Charity Golf Tournament and the Tulsa Lawyers' Boy Scouts Luncheon. He virtually attended the Membership Engagement Committee meeting, virtually chaired the Professionalism Committee meeting, and he

finalized and transmitted the Professionalism Committee's May letter to all Oklahoma county bar presidents. He also completed plans to attend the 2023 Louisiana State Bar Association Annual Meeting as a representative of the OBA and attended the Tri-County Bar Association Law Day reception and dinner. Additionally, he volunteered for Ask A Lawyer on Law Day at the Tulsa County Bar Association. He also attended the May meeting of the Council Oak/Johnson-Sontag American Inn of Court.

REPORT OF THE PRESIDENT-ELECT

President-Elect Pringle reported he worked on setting a date for the 2024 Annual Meeting. He attended Law Day celebrations at the Oklahoma County and Cleveland County bar associations, and he volunteered during the Ask A Lawyer event at the Oklahoma Bar Center. He worked with the Oklahoma Bar Foundation on IOLTA issues and attended the OBF Board of Trustees meeting. He attended the Membership Engagement Committee meeting and chaired the Strategic Planning Committee meeting. He worked on the process of remodeling the bar center front entrance and met Brian Shipp, the son of John E. Shipp, for whom the front entrance plaza is named. He also attended the Tri-County Bar Association reception.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she worked on setting a date for the 2024 Annual Meeting and attended a planning meeting for the Solo & Small Firm Conference. She attended the Cannabis Law Committee meeting, the Diversity Committee meeting and weekly meetings with the Federal Emergency Management Agency for the Disaster Response and Relief Committee in coordination with the Young Lawyers Division. She also attended the Pittsburgh County Bar Association Law Day reception and dinner as well as Law Day celebrations for the bar associations in Tulsa, Seminole and Oklahoma counties. She attended the YLD board meeting, the Membership Engagement Committee meeting, the Strategic Planning Committee meeting and a meeting related to remodeling the Oklahoma Bar Center entrance. Additionally, she attended the new admittee swearing-in ceremony, the Board of Bar Examiners meeting, the YLD happy hour event for new admittees, the Bench and Bar Committee meeting and the Tri-County Bar Association reception. She also discussed the expansion of Lawyers Helping Lawyers services with Governor Ailles Bahm and the executive director of A Chance to Change.

REPORT OF THE PAST PRESIDENT

Past President Hicks reported he attended the Tulsa County Bar Association Law Day Luncheon and the Tulsa County Bar Foundation annual Charity Golf Tournament. He attended the Tulsa Lawyers' Boy Scouts Luncheon and the Tri-County Bar Association reception. He also attended the State Bar of Texas Annual Meeting as a representative of the OBA, and he is planning on attending the Southern Conference of Bar Presidents in the fall.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Oklahoma County Law Day Luncheon and volunteered to serve as an Ask A Lawyer participant. She attended the Bench and Bar Committee meeting and the Tri-County Bar Association reception. She discussed the expansion of mental health services with Executive Director Johnson and followed up on and reported to Lawyers Helping Lawyers Assistance Program Committee Chair Goode and Governor Barbush on ongoing efforts regarding LHL. **Governor Barbush** reported he attended the McIntosh County Bar Association meeting and gave a CLE presentation on legal malpractice, gave four presentations at Durant High School on Law Day and attended the Tri-County Bar Association Banquet. **Governor Bracken** reported he attended the Oklahoma County Bar Association Law Day Luncheon, chaired the Military Assistance Committee meeting and worked on planning CLE sessions for the Military Assistance Committee. He attended the Bench and Bar Committee meeting and the Tri-County Bar Association reception. **Governor Conner** reported by email he attended the Garfield County Bar Association meeting and the Oklahoma County Bar Association Law Day Luncheon. **Governor Dow** reported by email she attended the Center for Children and Families Annual Luncheon and Family Law Section meetings for both the OBA and Oklahoma County Bar Association. **Governor Hilfiger** reported he hosted a booth as part of the Muskogee County Bar Association at the Muskogee Chili Cook-Off and attended the Tri-County Bar Association reception. **Governor Knott** reported she attended the Canadian County Bar Association meeting and the OCU School of Law Alumni Association Gala. **Governor**

Rogers reported he attended the Clients' Security Fund Committee meeting and Tri-County Bar Association reception. **Governor Smith** reported she attended the Diversity Committee meeting, where its new chair, Devin Frost, led the meeting and discussed the Ada Lois Sipuel Fisher Diversity Awards, the annual Diversity Awards Dinner, CLE and outreach. She also attended the Oklahoma County Bar Association Law Day Luncheon, the farewell dinner for OCU School of Law Dean Jim Roth and the A.C. Hamlin Scholarship Gala. **Governor Thurman** reported he organized and hosted the first Administrative Professionals Appreciation Cookout for the staff of all law firms in Pontotoc County, attended the Oklahoma Bureau of Narcotics prosecutor training and corresponded with the Disaster Response and Relief Committee Chair Molly Aspan regarding relief efforts from the most recent tornadoes. He also met with the Pontotoc County Bar Association officers and with local attorneys and judges regarding attendance at the Sheep Creek event in Pontotoc County. He also attended the Tri-County Bar Association reception. **Governor Vanderburg** reported he attended the Oklahoma Municipal Judges Association Spring Conference and Board of Directors meeting and the Kay County Bar Association meeting. He finished the work on the state's Cost Administration Implementation Committee related to the recent passage of HB 2259, which affects fines, costs and assessments in Oklahoma's municipal and district courts.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Shaffer Siex reported she attended the America Bar Association Joint Tort Trial and Insurance Practice Section and YLD Spring Conference in New York, the YLD Board of Directors meeting and the Tulsa YLD happy hour to celebrate the new admittees swearing in. She coordinated and set up both celebrations in Oklahoma City and Tulsa. She also coordinated with the ABA YLD district representative regarding disaster implementation and with Executive Director Johnson regarding the implementation. She met with YLD directors to plan upcoming meetings prior to the Solo & Small Firm Conference and with Clayton Baker regarding a Wills for Heroes event on July 29. Additionally, she shared a portion of the YLD survey results with Educational Programs Director McCormick and reviewed the first quarter of the YLD budget and the to-date budget with Administration Director Brumit and Treasurer Taylor Venus.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported she has hired Jana Harris as a new assistant general counsel and described a busy summer trial schedule coming up. She also reported as of April 30, there were seven disciplinary cases awaiting decisions from the Oklahoma Supreme Court. Between April 1 and April 30, the Supreme Court issued one order of dismissal, three orders approving resignation pending disciplinary proceedings and two orders of disbarment. A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Thurman reported the **Disaster Response and Relief Committee** is meeting weekly due to recent weather events, and FEMA is involved in those meetings. Governor Ailles Bahm reported the **Bench and Bar Committee** recently met for a productive meeting featuring State Rep. Mickey Dollens as the speaker. The committee is updating a PowerPoint presentation aimed at expanding understanding of the Judicial Nominating Commission. She also said she will represent the **Lawyers Helping Lawyers Assistance Program Committee** in a meeting set for later in the month with the new executive director of A Chance to Change. Discussion will involve the possible expansion of mental health services as there has been an alarming increase in the number of suicides in the legal profession. Governor Barbush added

Discussion will involve the possible expansion of mental health services as there has been an alarming increase in the number of suicides in the legal profession.

that the committee will participate in the upcoming Southeastern Oklahoma Summit set for June. He also praised the **Cannabis Law Committee** leadership, noting the group has been productive and meeting regularly. Governor Rogers said the **Clients' Security Fund Committee** met recently to discuss a high number of pending claims against a recently deceased lawyer. He said it is anticipated resolving those claims will require a heavy workload. He also reported the **Professionalism Committee** is meeting regularly and has identified a need for greater civility among practitioners. The group is working to encourage professionalism moments during local county bar meetings. Governor Smith reported the **Diversity Committee** recently met in April and praised its new leadership. Topics for a planned CLE are being discussed. She reminded the board that nominations are currently being accepted for the annual Diversity Awards. Past President Hicks said the **Strategic Planning Committee** recently met and is moving forward with a discovery process for technology improvements. The OBA Strategic Plan is being reviewed by committee members, and the board can expect a report on how well the OBA is performing to plan. Governor Hilfiger said the **Law Day Committee** had a successful event on May 1, and the committee chair will provide a full report on 2023 activities at the June meeting of the Board of Governors. Vice President Williams said the **Legislative Monitoring Committee** will meet next week to begin planning its annual Legislative Debrief. He also said the **Membership Engagement Committee** heard a preliminary report of findings related to the Annual Meeting survey of members that is still underway. He noted that emerging insights include an increased demand for alcohol-free spaces during association events and that members seem generally unopposed to the idea of moving the meeting to the summer months. Governor Bracken said the **Military Assistance Committee** recently met and is planning its participation in the annual Sooner Stand Down for homeless veterans.

APPLICATION TO SUSPEND FOR FAILURE TO PAY 2023 DUES

Executive Director Johnson explained the process of suspension, advising that notice to show cause is mailed followed by very diligent efforts to contact each person on the list before the application is filed with the court. The board passed a motion to approve the application to suspend.

APPLICATION TO SUSPEND FOR FAILURE TO COMPLY WITH 2022 MCLE REQUIREMENTS

The board passed a motion to approve the application to suspend.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NON-PAYMENT OF 2022 DUES

The board passed a motion to approve the application to strike.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NON-COMPLIANCE WITH 2021 MCLE REQUIREMENTS

The board passed a motion to approve the application to strike.

PROFESSIONAL RESPONSIBILITY TRIBUNAL (PRT)

The board passed a motion to approve the reappointments of Charles W. Chesnut, Miami; Anne Sickles Maguire, Tulsa; Jennifer Irish, Edmond; and Patricia Parrish, Oklahoma City; with terms expiring June 30, 2026.

The board also passed a motion to approve the appointment of Martha Rupp Carter, Tulsa, to a term expiring June 30, 2026.

BUDGET COMMITTEE APPOINTMENTS

The board passed a motion to approve the following appointments made by President-Elect Pringle. Members of the House of Delegates: Governor Dustin Connor – BOG/HOD; Cody Cooper – HOD; Mack Martin – HOD; Alissa Preble Hutter – HOD; Brandi Nowakowski – HOD; Andrew (Drew) Mildren – HOD. Board of Governors: Vice President Ken Williams – BOG; Governor Angela Ailles Bahm – BOG; Governor Jana Knott – BOG.

UPCOMING OBA AND COUNTY BAR EVENTS

President Hermanson reviewed upcoming bar-related events, including the Payne County Law Day event, May 22, Stillwater Public Library; Sheep Creek Event, June 1, Ada; Southeastern Oklahoma Summit, June 3, Don W. Reynolds Community Center, Durant; Sovereignty Symposium, June 13-14, Skirvin Hilton Hotel, Oklahoma City; OBA Solo & Small Firm Conference, June 22-24, Osage Casino, Tulsa; and the OBA Annual Meeting, Nov. 1-3, Skirvin Hilton Hotel, Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in June and July, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Friday, Aug. 25, at the Oklahoma Bar Center in Oklahoma City.

Cool.

New frequency discounts. New digital ad sizes. Design services available. How refreshing.

Tap into a niche audience and reach more than 15,500 offices and homes with print ads in the *Oklahoma Bar Journal* and digital ads in the new, weekly *Courts & More* issues.

www.okbar.org/barjournal/advertising

OKLAHOMA BAR ASSOCIATION

CASA of Canadian County: Michelle's Story

MICHELLE WAS ONLY 12 YEARS old when she told her doctor her stepfather abused her sexually. At the time, her mother had no idea, and her stepfather denied her claims. Michelle's testimony and physical evidence, however, were undeniable, so she was removed from the home and placed with her grandmother. Michelle was then assigned to a Court Appointed Special Advocates (CASA) volunteer named Laurie. Laurie met with Michelle several times a month, and soon they became very close. Michelle often called when she was upset or had flashbacks, and Laurie helped her process the trauma and calm down.

Laurie worked with the Department of Human Services to get Michelle into counseling and on an individualized education program at school. She also helped Michelle obtain a victims protective order against her stepfather so that he could legally no longer have contact with her. At each stage of the court process, Laurie made sure Michelle was involved and understood what was happening.

During this time, Michelle's mother took the appropriate steps to create a new relationship with her daughter, including divorcing Michelle's stepfather and attending individual counseling sessions and parenting classes. Laurie supervised visits between Michelle and her mother until Michelle felt safe with her mom again. Laurie helped them start family counseling to process what they had been through. After almost a year of many hardships and difficult conversations, Michelle was excited to go home and live with her mother. Laurie still checks in with Michelle, and Michelle calls Laurie anytime she needs to talk.

CASA volunteers talk to children, foster parents, service providers, educators, parents and relatives. All the information they gather through these contacts is compiled into a report that is presented to the judge presiding over the case. CASA volunteers serve as the "eyes and ears" of the court outside of the courtroom. Children say CASA volunteers:

- Listen to them
- Care about them
- Understand them

They give children a voice while representing their best interests.

The Oklahoma Bar Foundation is currently funding six CASA organizations serving the following Oklahoma counties: Canadian, Carter, Kay, Logan, Payne, Rogers, Delaware, Washington, Oklahoma, Beckham, Custer, Washita, Muskogee, Osage and Tulsa.

OBF COURT GRANT RECIPIENTS

COURT	EQUIPMENT	GRANT AMOUNT
Comanche County District Court	Audio backup system for seven courtrooms and steno machines for four courtrooms	$64,474
Tulsa County Court	Sound systems for four courtrooms	$30,000
		$94,474

COURT GRANT RECIPIENT HIGHLIGHT – COMANCHE COUNTY

From left Beverly Lohrey, CSR, Judge Emmit Tayloe, Jaime Bracher, CSR, and Michelle Muldowney, CSR.

The Comanche County District Court is thrilled with our new equipment. It will be a great addition to the processing of cases and the record. There has been a backlog of cases due to many things, one of which is the ability to have a record because of the lack of court reporters as well as the ability to make a record due to old, non-functioning equipment. The court wants to thank the Oklahoma Bar Foundation for its generosity and assistance.

PARTNER WITH THE OKLAHOMA BAR FOUNDATION

Make access to justice a priority in your charitable giving!

Partners Advancing Justice

Partners Advancing Justice
Individual giving program – giving starts at $10/month or $100/year.

Community Partners for Justice
Group annual giving program – giving starts at $1,000.

Legacy Partners for Justice
Leave a legacy by making a planned gift to the OBF. Joining as a Legacy Partner is one of the most powerful actions you can take to ensure justice is possible for all.

More Ways to Support the OBF

Cy Pres
Leftover monies from class action cases can be designated to the OBF's Court Grant Fund or General Fund.

Memorials & Tributes
Make a gift in honor of someone – OBF will send a handwritten card to the honoree or their family.

Unclaimed Trust Funds
Contact the OBF office if you have unclaimed trust funds in your IOLTA Account (405-416-7070 or foundation@okbar.org).

Give Now!

OKLAHOMA BAR FOUNDATION
Law. Education. Justice.

Partner with us to advance justice.

Give Online: www.okbarfoundation.org/donate

Name: _____ Firm: _____

Address: _____ City: _____ State: _____ Zip: _____

Email: _____ Phone Number: _____

◯ I am making my Partners (Fellows) payment.

◯ I am making a Memorial or Tribute Gift in honor of _____.

◯ Donation Amount: $ _____.

● *Sign me up as a monthly Partner!*

Choose your Level of Impact:

◯ $100/Mo ◯ $30/Mo ◯ $10/Mo
◯ $50/Mo ◯ $20/Mo ◯ Other _____

Payment Type: ◯ *Check* ◯ *Credit or Debit* ◯ *EFT*

◯ *AMEX* ◯ *Discover* ◯ *MasterCard* ◯ *VISA*

Name on Card: _____

Card Number: _____

Exp. Date: _____ Security Code: _____

◯ *Checking Account* ◯ *Savings Account*

Name on Account: _____

Routing Number: _____

Account Number: _____ Bank: _____

Signature: _____ Date: _____

Mail Card to OBF at:
P.O. Box 53036, Oklahoma City, OK 73152

Everything You Always Wanted to Know About YLD Elections*

*But Were Afraid to Ask

By Dylan D. Erwin

AT THIS STAGE OF MY LONG and storied legal career (read: nine years), I am dangling over the precipice separating the *young* lawyers from the – I suppose – *not young* lawyers. This awkwardly placed adjective is misleading. Under Article 2.1 of the Young Lawyer's Division bylaws, "[a]ll members of the Oklahoma Bar Association in good standing who were first admitted to the practice of law in any jurisdiction 10 years ago or less" qualify as *young*. In short, it identifies the vintage of the attorney rather than the age of the individual. Not only that but by *simply existing*, you are automatically a member of the YLD.

Since I passed the bar, I've had the pleasure of being involved with the YLD. So as the resident old "young" guy, I don't think it would be untoward to offer some unsolicited advice to you newbies out there: get involved. Get involved early and stay involved. Since holding my first office in the YLD way back in 2015, I've been lucky enough to be elected to every possible office within the organization. Service to this wonderful community of professionals has been a highlight of my career. Not only have I been provided with a panoply of networking opportunities, but I have also been gifted a litany of lifetime friendships.

Why does this all matter though? Why should you care? Why did the *Oklahoma Bar Journal*, after giving me an entire year's worth of articles, give me another megaphone? Because I have one final duty as your YLD immediate past chairperson: to pass the torch. Elections for the 2024 OBA YLD Board of Directors are coming this October, and I think you should apply. Here's what you need to know.

NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA YLD and must be submitted by Friday, Aug. 11, at 5 p.m. A separate petition must be filed for each opening, except a petition for a directorship shall be valid for one-year and two-year terms and at-large positions. A person must be eligible for division membership for the entire term for which elected.

ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In September, a list of all eligible candidates will be published in the *Oklahoma Bar Journal*. Ballots will be emailed Oct. 2 to all YLD members at the email address in the official OBA roster. All members of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee shall only vote in the event of a tie. Please see the OBA YLD bylaws for additional information at www.okbar.org/yld/bylaws.

DEADLINE

Nominating petitions, accompanied by a photo and bio of 350 words or less for publication in the *Oklahoma Bar Journal*, must be forwarded to me at derwin@holladaychilton.com no later than 5 p.m. Friday, Aug. 11. The results of the election will be announced at the YLD meeting at the OBA Annual Meeting.

TIPS FROM THE NOMINATING COMMITTEE CHAIRPERSON

- A sample nominating petition is available at https://bit.ly/3yL2mcB. This will give you an idea of the format and information required by OBA YLD bylaws (one is also available from the Nominating Committee). Email derwin@holladaychilton.com to request a nominating petition.
- Obtain signatures (electronic signatures are permitted) on your nominating petition from at least 10 lawyers who were first admitted to practice law in the state of Oklahoma within the past 10 years. Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
- Take your petition to local county bar meetings or the courthouse and introduce yourself to other young lawyers while asking them to sign – it's a good way to start networking.
- You can have more than one petition for the same position and add the total number of original signatures.
- Don't wait until the last minute – I will not accept petitions that are scanned and emailed after the deadline.
- Membership eligibility extends to Dec. 31 of any year that you are eligible.
- Membership eligibility starts from the date of your first admission to the practice of law, even if outside of the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the bar journal. All biographical data must be submitted by email, with no exceptions. Petitions submitted without a photograph and/or a brief bio are subject to disqualification at the discretion of the Nominating Committee.

Mr. Erwin practices in Oklahoma City and serves as the YLD immediate past chairperson. He may be contacted at derwin@holladaychilton.com. Keep up with the YLD at www.facebook.com/obayld.

2023 YLD BOARD VACANCIES

OFFICERS

Officer Positions serve a one-year term.

Chairperson-Elect: Any member of the division having previously served for at least one year on the OBA YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2024.

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

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

BOARD OF DIRECTORS

Board of Directors members serve a two-year term.

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

District 3: Oklahoma County

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

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

District 6: Tulsa County

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

District 8: Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties

At-Large: All counties

ONE ASSOCIATION ★ MANY OPPORTUNITIES

JOIN AN OBA COMMITTEE TODAY!

Get more involved in the OBA, network with colleagues and work together for the betterment of our profession and our communities.

More than 20 active committees offer you the chance to serve in a way that is meaningful for you.

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

ENDORSED BY THE OBA FOR **MORE THAN 60 YEARS!**

3000 INSURANCE GROUP

Health · Life · Disability · Business Insurance · Home · Auto

CONTACT US TO DISCUSS ANY OF YOUR INSURANCE NEEDS!

WWW.3000IG.COM

405.521.1600

3000 NW 149TH ST,
OKLAHOMA CITY, OK 73134

For Your Information

LEGISLATIVE DEBRIEF

Save the date for the 2023 Legislative Debrief, Aug. 25, at 1:30 p.m., at the Oklahoma Bar Center. During this event, you will hear from several speakers giving updates from the 2023 session on various law-related topics. There will also be a legislative panel providing their input on this year's legislative session and potential areas of interest for next year. This event will be worth CLE credits, and snacks will be provided. Visit www.okbar.org/debrief for more information and to register.

PRESIDENT HERMANSON SPEAKS TO OKLAHOMA SUPREME COURT LEGAL INTERNS

On Tuesday, June 20, Oklahoma Supreme Court justices hosted a reception for the current group of Supreme Court legal interns at the Oklahoma Judicial Center. OBA President Brian Hermanson was the guest speaker at the event. During his speech, President Hermanson discussed his winding legal career as a small-firm attorney and his current role as DA, including the two most influential cases in his career. He also emphasized the importance of showing respect toward other attorneys, both inside the courtroom and out.

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will be closed Monday, Sept. 4, in observance of Labor Day; be sure to docket the OBA Annual Meeting Nov. 1-3 at the Skirvin Hilton Hotel in Oklahoma City.

THE BACK PAGE: SHOW YOUR CREATIVE SIDE

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

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

Are you following the OBA on social media? Keep up to date on future CLEs, upcoming events and the latest information about the Oklahoma legal community. Connect with us on LinkedIn, Twitter, Facebook and Instagram.

JUDICIAL NOMINATING COMMISSION ELECTION RESULTS ANNOUNCED

Two Oklahoma attorneys were elected to serve as new members of the Oklahoma Judicial Nominating Commission. Mary Quinn Cooper of Tulsa and Weldon W. Stout Jr. of Muskogee will each serve six-year terms on the 15-member commission, with terms expiring in 2029. Ms. Cooper was elected to serve as the District 1 commissioner, which is composed of Creek and Tulsa counties. Mr. Stout was the uncontested nominee to serve District 2, which is composed of 17 counties in the eastern and northeastern parts of the state. To read more about the new members or to learn more about the Judicial Nominating Commission, visit www.okbar.org/jnc.

JUDGE KERN ANNOUNCES RETIREMENT

Senior U.S. District Court Judge Terence C. Kern, Northern District of Oklahoma, has announced he will retire at the end of 2023. Recommended by Sen. David L. Boren and nominated by President Bill Clinton, Judge Kern has served on the federal court since being confirmed by the U.S. Senate on June 8, 1994. Since taking the bench, he has served as a member of the Judicial Conference Committee on Security and Facilities, as a member of the Committee on Space and Facilities and as chair of the 10th Circuit Space and Facilities Committee. He served as chief judge of the Northern District of Oklahoma from 1996-2003. He served as president of the Oklahoma Bar Foundation in 1991 and as president of the Council Oak/Johnson-Sontag Chapter of the American Inns of Court in 2008. He is a member and fellow of the Tulsa County Bar Association and serves on the Oklahoma Medical Research Foundation Board of Directors. He received his J.D. from the OU College of Law in 1969.

LHL DISCUSSION GROUP HOSTS MARCH MEETINGS IN OKC AND TULSA

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

From left Jocelyn Taylor, Chris Jones (president of the Bryan County Bar Association), Margaret Taylor, Marna Taylor Pemberton and Leah Taylor are pictured in front of a portrait of Judge Joe Taylor.

BRYAN COUNTY BAR ASSOCIATION, FAMILY OF JUDGE JOE TAYLOR AND CHAHTA FOUNDATION ESTABLISH SCHOLARSHIP

The Bryan County Bar Association and the family of Judge Joe Taylor in coordination with the Chahta Foundation have established the Judge Joe Taylor Scholarship. The scholarship, in honor of the late Judge Joe Taylor, will assist Choctaw tribal members in pursuing higher education. The Chahta Foundation will match all donations dollar for dollar. If you would like to contribute, visit Chahtafoundation.com, or mail your donation to:

Chahta Foundation
P.O. Box 1849
Durant, OK 74702

PRACTICE WELL, NO MATTER WHERE YOU ARE, WITH RUBY®

Running a firm in a moment of uncertainty isn't easy, but one thing hasn't changed: Ruby is is still turning callers into clients for over 5,000 attorneys just like you.

"Frankly, I love your company. As much as you extend the compassion and optimism I try to provide my clients, I've also learned even more about the value of good customer service from all of you."
-DIANE HAAR, HAWAII DISABILITY LEGAL

20%+
BOOST IN POTENTIAL NEW BUSINESS

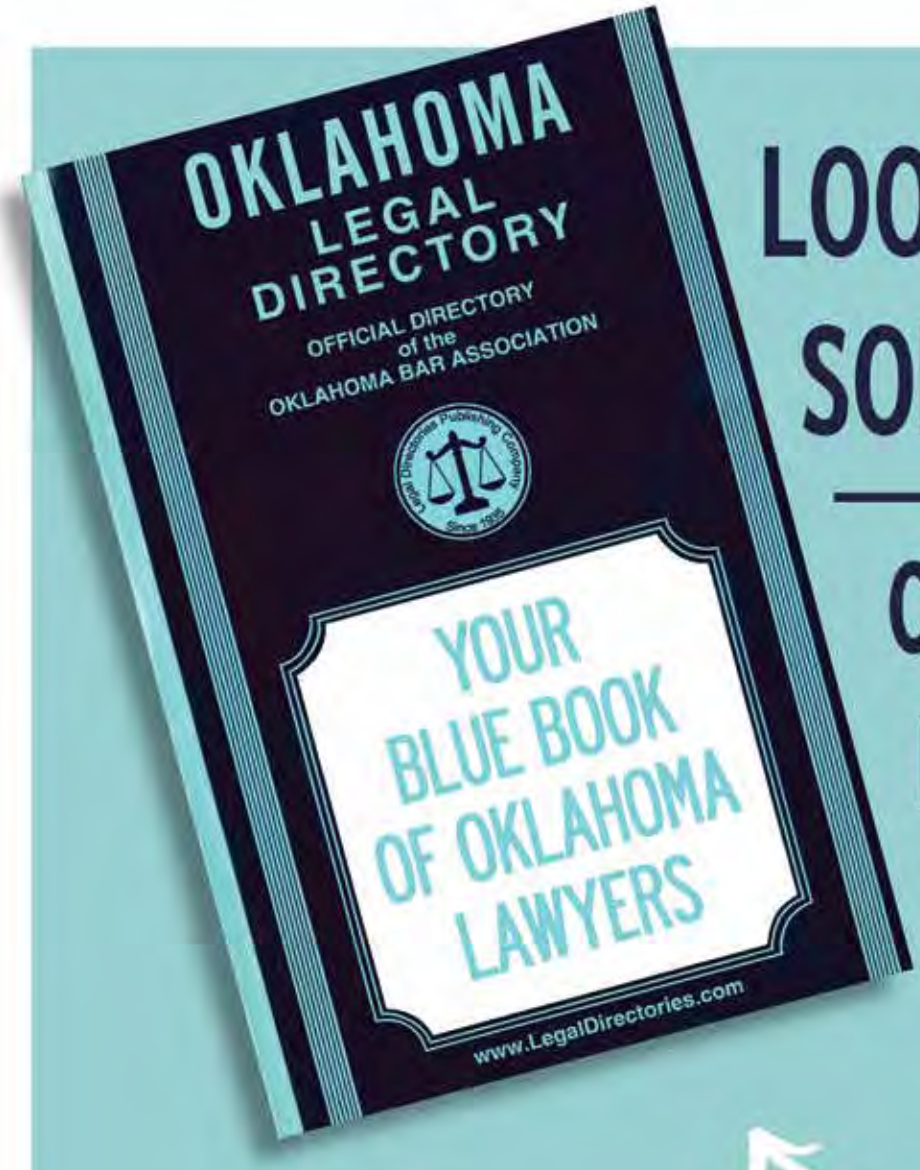
10hrs
OF DISTRACTION FREE TIME REGAINED

10%+
INCREASE IN HAPPY CUSTOMERS

*Use promo code **OKBAR** to receive **6% off.***

VISIT WWW.RUBY.COM/OKBAR TO LEARN MORE
OR BETTER YET CALL US AT 844-569-2889

ruby.



LOOKING FOR SOMETHING?

CHECK YOUR BLUE BOOK!

It's all in here!

The Oklahoma Legal Directory is the official OBA directory of member addresses and phone numbers, plus it includes a guide to government offices and a complete digest of courts, professional associations including OBA committees and sections. To order a print copy, call 800-447-5375 ext. 2 or visit www.legaldirectories.com.

ON THE MOVE

Chad Neuens has joined the Tulsa office of Helton Law Firm in an of counsel position. He practices in the areas of business litigation, product liability, construction, banking and transportation, among others. He is also a mediator named to Dispute Resolution Consultants and is licensed to practice in Oklahoma, Texas and Colorado, as well as several federal courts.

Shane Fletcher has joined the Tulsa office of Helton Law Firm as an associate attorney. He practices in the areas of trust and estate litigation, commercial litigation, business collections, personal injury, construction defects and estate planning. Mr. Fletcher is licensed to practice in Oklahoma and Arkansas, as well as several federal courts.

Joshua W. Solberg has joined the Oklahoma City law firm of Hartzog Conger Cason as a partner. He is a trial attorney who primarily practices in the area of labor and employment law, including discrimination, wrongful discharge, wage and hours and other disputes arising from employer relationships with employees. Mr. Solberg received his J.D. with highest honors from the TU College of Law, where he was an editor of the *Tulsa Law Review* and a member of the Order of the Curule Chair.

Carly D. Kirkland has joined the Oklahoma City office of McAfee & Taft as an associate attorney. She is a member of the firm's Healthcare Group. She practices in the areas of healthcare transactions, regulatory compliance matters, business operations, HIPAA compliance and health privacy. Ms. Kirkland received her J.D. from the OU College of Law in 2022, where she was a member of the Chicago Bar Association Moot Court Team and the Victim Advocacy Program. She has been awarded the David Swank Professionalism Award and an American Jurisprudence Award in legal research and writing.

D. Bryan Goodpasture and **Samantha T. Lemke** have joined the Oklahoma City law firm of Durbin, Larimore & Bialick as associate attorneys. Mr. Goodpasture practices in the areas of civil litigation, insurance law and personal injury. He received his J.D. from the OU College of Law in 2019. Ms. Lemke practices in the areas of insurance law, products liability, employment law and personal injury. She received her J.D. from the OCU School of Law in 2022.

Madison B. Miller has joined the Oklahoma City law firm of Ryan Whaley. She has had more than 12 years of experience at the Oklahoma Department of Environmental Quality. She served as a staff and supervising attorney for the department's Air Quality Division and, most recently, deputy general counsel. Ms. Miller practices in the area of air compliance issues. She received her J.D. from the OU College of Law in 2010.

Chase Grant, **Mike Voorhees** and **Sharon Voorhees** have joined to create the law firm of Voorhees & Grant. The firm will provide services in the areas of estate planning, probate, guardianship, real estate and small business representation. Prior to this, Mr. Grant formed his own practice in 2021, and Mr. and Ms. Voorhees practiced together since 1992.

Christopher W. Cotner has returned to the Oklahoma City law firm of Mee Hoge as a partner. He practices in the areas of medical marijuana law, business organization and transactional law, estate planning and general civil litigation. Mr. Cotner previously worked at the firm before leaving to establish a nonprofit organization, Water4. Following that, he returned to private practice at the Bethany Law Center.

Sara K. Hawkins has been promoted to partner at the Oklahoma City law firm of Mee Hoge. She has worked at the firm as an associate attorney since 2013, assisting clients with estate planning and probate matters. Ms. Hawkins practices in the areas of estate planning and administration, business organization and transactional law, real estate, *ad valorem* tax appeals and oil and gas.

Will J. Collins has joined the Oklahoma City office of Hall Booth Smith as an associate attorney. He practices in the areas of aging services, business litigation, business transactions, general liability, health care, insurance coverage, labor and employment, medical malpractice, products liability and real estate matters. Mr. Collins earned his J.D. with honors from the OU College of Law, where he participated in

the National Health Law Moot Court team. He was involved in the *American Indian Law Review* and clerked for Justice Kauger and Justice Colbert at the Oklahoma Supreme Court.

Ken Ray Underwood has relocated his practice to the Petroleum Club Building at 601 S. Boulder Ave. in Tulsa.

Brian Blackstock and **Clare G. Gibbons** have joined the law firm of GableGotwals as of counsel attorneys. Previously, Mr. Blackstock gained experience in civil litigation, primarily focusing on defending corporate and individual clients in both state and federal courts. He represents insurers facing bad faith allegations and institutional misconduct and healthcare professionals and entities against medical malpractice, investigations and disciplinary proceedings. Ms. Gibbons practices in the area of corporate transactional matters, focusing on cybersecurity, federal contracting and commercial and operational contracts. She previously worked at Cherokee Federal and ONE Gas, where she managed federal contracts. Her experience includes drafting and negotiating agreements and analyzing and advising internal stakeholders on emerging cybersecurity requirements.

Braden M. Hoffmann and **Peyton S. Howell** have joined the Oklahoma City office of McAfee & Taft as trial lawyers. They focus on the resolution of complex business disputes, with an emphasis on tort litigation and insurance defense. Mr. Hoffmann received his J.D. with honors from the OU College of Law in 2019. Prior to joining McAfee & Taft, he worked at an Oklahoma-based civil litigation firm, where he spent nearly four years defending insurance companies and their insureds in lawsuits arising from trucking and vehicular accidents. Mr. Howell received his J.D. from the OU College of Law in 2019. Previously, he worked as an associate at a boutique defense firm where he managed a large medical malpractice litigation defense caseload, advised healthcare institutions on litigation avoidance strategies and represented healthcare professionals in licensure actions.

Deborah R. Thompson and **Kenneth A. Tillotson** have joined to create the new Oklahoma City law firm of Thompson Tillotson. The firm provides legal services to regulated public utilities and businesses in the energy sector, including regulatory proceedings, rulemakings, legislative matters and business development. Ms. Thompson has more than 25 years of experience in public utility and energy matters before the Oklahoma Corporation Commission and nearly a decade of power plant development experience and representation of various sectors of the power industry. Mr. Tillotson has represented clients in Oklahoma for more than 22 years and has practiced before state and federal courts in both Oklahoma and Arkansas, as well as the Oklahoma Supreme Court and the United States 10th Circuit Court of Appeals. He also represented the Public Utility Division of the Oklahoma Corporation Commission, served as legal and policy advisor at the Corporation Commission and, most recently, was director of legal services for Liberty Utilities.

Ann E. Keele has joined the Tulsa office of Hall Estill. She served as a special judge for the 14th Judicial District from 2019 to 2023. During her time as a judge, Ms. Keele presided over the victim protective order, misdemeanor and emergency guardianship dockets in Tulsa and Pawnee counties. She was selected as the Oklahoma Family Judge of the Year by the OBA Family Law Section in 2022, as well as the Oklahoma Family Law Attorney of the Year in 2017. She practices in the areas of family law, mediation, divorce and legal separation, paternity and adoption.

Kate N. Dodoo has been named the leader of the Appellate Group at McAfee & Taft. She is a trial and appellate lawyer at the firm's Oklahoma City office, as well as the leader of the firm's Immigration and Compliance Group. Previously, Ms. Dodoo served as an assistant chief counsel in the U.S. Department of Homeland Security, Immigration and Customs Enforcement's Office of the Principal Legal Advisor, where she litigated complex immigration removal proceedings and maintained an appellate practice before the Board of Immigration Appeals. Additionally, she served as the assistant city attorney to the city of Enid and an appellate attorney to Justice Tom Colbert of the Oklahoma Supreme Court for 12 years.

Ted J. Nelson and **Spencer C. Pittman** have been named shareholders of the Tulsa law firm of Winters & King. Mr. Nelson received his J.D. from the O. W. Coburn School of Law at Oral Roberts University. Mr. Pittman received his J.D. from the TU College of Law. Mr. Nelson and Mr. Pittman both serve on the litigation team at Winters & King. They practice in the areas of business law and transactions in addition to providing legal counsel to nonprofit organizations, ministries and churches.

Joe Byars and **Josh Dickens** have joined the Helton Law Firm in Tulsa as of counsel. Mr. Byars focuses on litigation matters, including business and commercial litigation, employment, construction, serious personal injury and trust and estate litigation. He also has significant experience with regulatory compliance and licensing. Mr. Dickens has more than 20 years of oil and gas, real estate and commercial law experience. He has worked in leading roles in over $1 billion in transactions, ranging from small business sales to large oil and gas asset transactions.

C. Bretton Crane Jr., **Ethan Mock** and **Alex Telarik** have been named shareholders of the Tulsa law firm of Pray Walker. Mr. Crane joined the firm in 2019, concentrating his practice in the areas of corporate governance as well as business, finance and commercial transactions. Mr. Mock, who joined the firm in 2017, practices in the areas of energy law and oil and gas title examination. Mr. Telarik practices in the areas of complex commercial litigation, oil and gas and appellate law.

AT THE PODIUM

Judge Timothy A. Brauer lectured on "Transitioning to the Bench" to judges from jurisdictions across the country at the general jurisdiction course in Reno, Nevada. He is a faculty member of the National Judicial College.

Marty Ludlum spoke to the Oklahoma Funeral Directors Association in Norman about the Federal Trade Commission and the changing world of business regulation. Mr. Ludlum is a business law professor at the University of Central Oklahoma.

Rhiannon K. Baker spoke at TEDxUTulsa in March about her personal experience with forgiving her kidnapper, titled "Forgiving the Unforgivable."

Bob Burke gave the keynote address at the annual induction ceremony for the College of Workers' Compensation Lawyers in New York City. In his speech, he challenged leaders of the nation's workers' compensation system to focus on civility in dealings with clients, other lawyers and judges.

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
405-416-7018
barbriefs@okbar.org

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

KUDOS

Gary B. Homsey has received the 2023 Marian P. Opala Award for Lifetime Achievement in Law, as well as the 2022-2023 William J. Holloway Jr. Award, which was awarded in recognition of his outstanding commitment to civility, professionalism and public service. He is a past president of the Oklahoma Trial Lawyers Association and the Oklahoma Chapter of the American Board of Trial Advocates.

The Oklahoma City law firm of Phillips Murrah has achieved the Midsize Mansfield Plus Certification. The certification is a confirmation that advancement processes and job expectations for leaders are transparent. Additionally, it certifies the firm has achieved a 30% representation of historically underrepresented lawyers in current leadership roles and pathway activities.

Jacque Brawner Dean has completed a two-year term as president of the College of Workers' Compensation Lawyers, a national group of approximately 600 judges, administrators and lawyers for employers and employees in the field of workers' compensation. Ms. Dean presided over the annual induction ceremony in New York City.

Margaret Bomhoff and **Grady Parker Jr.** have been inducted into the College of Workers' Compensation Lawyers. Ms. Bomhoff serves as judge of the Workers' Compensation Court of Existing Claim. Mr. Parker works as a defense attorney in Oklahoma City.

Larry G. Ball and **Betsy G. Jackson** have been elected to the executive committee of Hall Estill. Mr. Ball has practiced in the areas of bankruptcy, litigation and commercial law for more than 35 years. He previously served for a year on the executive committee. Ms. Jackson primarily practices in the areas of securities, business transactions, commercial finance, real estate and mergers and acquisitions. She has more than 30 years of experience and was the 2018 recipient of the OBA Ada Lois Sipuel Fisher Diversity Award.

Daniel V. Carsey, **Christopher L. Carter** and **Andrew J. Romanow** have been elected to the Board of Directors at the law firm of Hall Estill. Mr. Carsey practices in the area of commercial litigation in the oil and gas, banking and technology industries. Mr. Carter practices in the areas of real estate, finance and corporate transactions. Mr. Romanow practices in the area of financial and corporate transactions, as well as business organizational matters, such as litigation and event response.

In Memoriam

L. Enloe Baumert of Ponca City died June 22. He was born Jan. 2, 1933, in McAlester. Mr. Baumert received his J.D. from the OU College of Law in 1958 and practiced in the areas of business and corporate law and estate planning. **He served four years in the U.S. Air Force before transferring to the Air Force Reserves in the Judge Advocate Office. Mr. Baumert served his country for 39 years and was awarded the Quilt of Valor in 2022.** He continued to serve his community through organizations such as the YMCA, the Opportunity Center, Ponca City Public Schools and the Chamber of Commerce. Memorial contributions may be made in his name to Marland's Place in Ponca City.

Bruce Alan Baumgardner of Norman died May 23, 2022. He was born July 5, 1948. Mr. Baumgardner received his J.D. from the OU College of Law in 1988.

Keith A. Brown of Lewisville, Idaho, died March 11. He was born Feb. 16, 1956, in Topeka, Kansas. Mr. Brown received his J.D. from the TU College of Law in 1988. He graduated from Southern Methodist University with his LL.M. in taxation and went to work at Phillips Petroleum. In 1991, he started his own tax business. Mr. Brown was active in the Bartlesville community, serving on boards of organizations such as Samaritan Counseling & Growth Center and the Bartlesville Civic Ballet. Memorial contributions may be made to the Samaritan Counseling & Growth Center, the Bartlesville Civic Ballet or the charity of your choice.

Sarah R. Brown of Sapulpa died May 1. She was born Jan. 11, 1985, in Shattuck. Ms. Brown graduated from TU, where she was a member of the Chi Omega fraternity and a leader within the Sociology Department. She received her J.D. from the TU College of Law in 2010. She began her legal career at the Tulsa City Council and soon expanded to judgeships for Tulsa and Depew. Additionally, she served as the policy director for the Sac and Fox Nation and a professor at Oral Roberts University and the University of Arkansas. She also owned her own private legal practice. Ms. Brown was a Tulsa 30 Under 30 honoree and an active volunteer at Tulsa Lawyers for Children. Memorial contributions may be made to Tulsa Lawyers for Children or TU, noting the Sarah R. Brown Scholarship Fund.

H. Leonard Court of Oklahoma City died April 17. He was born Jan. 11, 1947, in Ardmore. Mr. Court was a distinguished graduate of both OSU and Harvard Law School. **He served as a judge advocate general in the U.S. Air Force from 1973 to 1977**. He spent his entire legal career at the law firm of Crowe & Dunlevy, where he established and served as chairman of the Labor & Employment Practice Group. Additionally, he served as an adjunct law professor at the OU College of Law and OCU School of Law. Mr. Court also served as a member of the U.S. Chamber of Commerce Labor Relations Committee and chairman of the Wage, Hour and Leave Subcommittee. He was the former president of the OSU Alumni Association, served on its Board of Governors, received the Distinguished Alumni Award and was inducted into its hall of fame.

Luther Franklin Cowan of Yukon died June 29. He was born Aug. 1, 1943. During his time in college, he represented OCU in nationwide debates at the United Nations. After earning his bachelor's degree in philosophy, he started law school, but it was postponed by his military service. **Mr. Cowan served in the U.S. Air Force from 1967 to 1971, helping man radar installations across North America that protected the continental U.S.** He received his J.D. from the OCU School of Law in 1973. He dedicated 20 years of his legal career to the state of Oklahoma as a prosecuting attorney, seeking justice for crime victims and protecting the public from harm, earning him the Oklahoma District Attorneys Association Outstanding Assistant DA Award in 1981. Mr. Cowan became an assistant to Judge Steve Lile at the Oklahoma Court of Criminal Appeals and retired in 2002.

Fred Henderson DeMier of Miami died May 24. He was born July 14, 1934, in Miami. Mr. DeMier received his J.D. from the TU College of Law in 1968 and spent his legal career in Miami and Tulsa. His legal career began with working as an assistant district attorney for years, then as a judge with the Oklahoma Court of Civil Appeals. He later worked as a criminal defense attorney. He was an active member of St. Patrick's Episcopal Church in Broken Arrow.

Lance A. Felactu of Edgewater, Maryland, died March 31, 2021. He was born Jan. 24, 1964. Mr. Felactu received his J.D. from the OCU School of Law in 1994.

Charles Bryan Graft of Clinton died April 28. He was born Jan. 15, 1941, near Putnam. He graduated from the OU College of Law in 1966 and opened his first law practice in 1967. Mr. Graft went on to form Graft & Cabaniss and eventually a partnership in banking as well, which led to the founding of the Bank of the West.

Angelita Aunko Hamilton of Gracemont died April 18. She was born May 10, 1951. Ms. Hamilton received her J.D. from the OCU School of Law in 1991.

Richard L. Hasley of Oklahoma City died May 2. He was born July 8, 1939, in Tipton. He received his J.D. from the OCU School of Law in 1968 and was an active attorney in Oklahoma City for 50 years. Mr. Hasley franchised, built and operated approximately 40 Mazzio's Pizza restaurants in Oklahoma and Texas over a 27-year period.

William Henry Henson of Lawton died Oct. 12, 2021. He was born Nov. 9, 1956, in Oklahoma City. He attended Norman High School and graduated from OU in 1979. He received his J.D. from the University of Pennsylvania Carey Law School in 1982. Upon graduating, he returned to Oklahoma to work at the Oklahoma City law firm of McAfee & Taft, where he practiced in the area of banking law. Mr. Henson eventually transitioned to managing his family's banking business and became a director of Olney Bancshares of Texas.

Sheppard F. Miers Jr. of Tulsa died June 4. He was born April 24, 1941, in Tulsa. He received his J.D. from the OU College of Law in 1966. **Mr. Miers served as an officer in the U.S. Army Judge Advocate General's Corps in Charlottesville, Virginia**. After completing his military service, he worked in Tulsa with the Cities Service Co. and eventually as a partner at Huffman Arrington Law Firm and GableGotwals. He continued his education, earning his CPA license and LL.M. in taxation at Southern Methodist University. Mr. Miers wrote for many publications, including the *Oklahoma Bar Journal* Tax Section Note, where he explained new Oklahoma tax laws each year from 1998 to 2022. Memorial contributions may be made to the Leukemia & Lymphoma Society.

Michael Alan Peters of Noble died March 20. He was born March 7, 1966. He received his J.D. from the OU College of Law and began his professional career at the Division of Air Quality at the Department of Environment Quality. At this job, he managed many cases and negotiated numerous air quality matters before progressing in his career working with the Environmental Quality Department at McKinney & Stringer Law Firm. Mr. Peters eventually established himself as a partner with Ryan Whaley Coldiron Jantzen Peters & Webber in Oklahoma City.

Robert T. Rennie Jr. of Pauls Valley died July 6. He was born Sept. 28, 1953, in Pauls Valley. Mr. Rennie received his J.D. from the OU College of Law in 1978. His legal career began at the Cleveland County District Attorney's Office, and eventually, he started his private practice at Scarce, Tipton and Rennie. Mr. Rennie was very involved in the Pauls Valley community, serving on various boards and participating as a member in many local organizations. Memorial contributions may be made to the Pauls Valley Animal Welfare Society or your local animal shelter.

Paul J. Sowinski of Wagoner died April 10. He was born April 5, 1964, in Des Plaines, Illinois. Mr. Sowinski received his J.D. from the TU College of Law in 2004 and served as an attorney in Oklahoma for 19 years.

Edward Eldon Sutter III of Alva died June 10. He was born April 20, 1950, in Fairview. He received his J.D. from the OCU School of Law after graduating from OSU. Mr. Sutter then moved to Alva, where he practiced law for nearly 47 years. For many years, he practiced at the law firm of Harmon & Sutter Law, which was eventually renamed Edward E. Sutter & Associates. He was involved in his community, helping through projects such as raising funds and developing the Bill Johnson Correctional Center Benson Center/Eversole Chapel and the Avard Regional Industrial Rail Park. He was appointed to the Oklahoma Highway Commission by Gov. Keating in 1995 and served for eight years. He was a member of the Woods County Bar Association,

Alva Rotary Club, Alva First United Methodist Church and more. Memorial contributions may be made to the Alva Education Foundation, the Northwestern Foundation & Alumni Association or the First United Methodist Church.

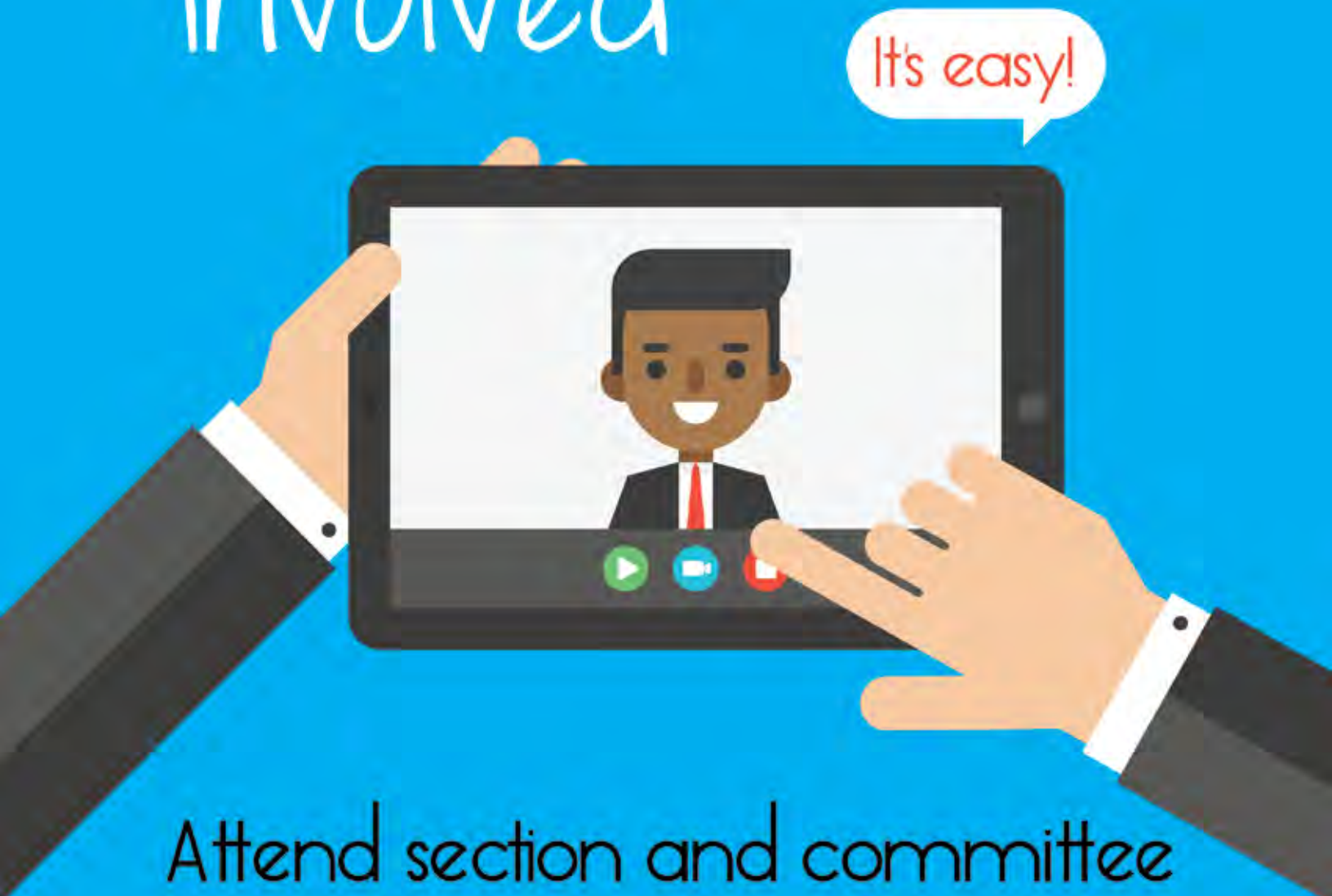
Roland Tague of Oklahoma City died May 16. He was born April 28, 1940, in Oklahoma City. He graduated from OU, where he was vice president of the Delta Tau Delta fraternity and was selected as a Man of Distinction in his senior year. He received his J.D. from the OU College of Law in 1965. Early in his legal career, he was named Outstanding Young Lawyer by the Oklahoma County Bar Association. Mr. Tague served several years on the Oklahoma County Bar Association board. He also served as president of the Oklahoma City Real Property Lawyers Association and was an original member of the Paralegal Advisory Committee at OU, which helped to create Oklahoma's first paralegal studies program. Memorial contributions may be made to the Cameron B. Tague Memorial Scholarship Fund at the Communities Foundation of Oklahoma or All Souls' Episcopal Church.

Judge Joe Clinton Taylor of Durant died June 14. He was born March 28, 1942, in Durant. Judge Taylor received his J.D. from the OU College of Law in 1968 and became Bryan County's first special judge in 1969. He served as the associate district and district judge for years before becoming an appellate judge in 1993. He retired in 2005 after sitting on the Oklahoma Court of Civil Appeals. Outside of his service to the state of Oklahoma, he served as a Choctaw Tribal Court Supreme Court justice from 1979 to 1983 and served the Seminole Nation and Sac and Fox Nation as a Supreme Court justice until May 2023. **He was a proud member of the U.S. Army Reserve, serving as a member of the Judge Advocate General's Corps and finally retiring as a lieutenant colonel after 30 years of service**. Memorial contributions may be made to the Oklahoma Bar Foundation, the Pride of Oklahoma Marching Band or Dry Bones Denver.

George Washington Jr. of Tulsa died Feb. 15. He was born March 7, 1942, in Oklahoma City. He earned his bachelor's degree in journalism from OU and received his J.D. from the OU College of Law. **During his college years, he joined the U.S. Army National Guard and served six years. He started training as a medic but eventually ended up serving in the Judge Advocate General's Corps**. Upon graduation, Mr. Washington began to practice law with his father and then by himself for 54 years. Memorial contributions may be made to the Tulsa Audubon Society's wildlife rehabilitation network, WING IT.

Judge James Austin Wilkinson of Fairview died May 5. He was born Feb. 8, 1930, in Salem, Oregon. **He was commissioned by the U.S. Army as a second lieutenant and served in the Korean War, earning the Korean Service Medal, Bronze Service Star, United Nations Service Medal and National Defense Service Medal**. After being honorably discharged as a first lieutenant, he attended the OCU School of Law and received his J.D. in 1958. Mr. Wilkinson's legal career spanned more than 60 years, with 16 years as a corporate and general practice attorney in New Mexico and Oklahoma and 20 years as the associate district judge in the 4th Judicial District. He was an advocate of improving rural access to justice, working on the Governor's Task Force on Judicial Improvements in Rural Areas. He also served his community through organizations such as Lions Club International, Boy Scouts of America, Northwest Oklahoma Police Academy and more. In 2021, he was awarded the Lifetime Achievement Award by the Fairview Chamber of Commerce. Memorial contributions may be made to the Hospice Circle of Love, the Fairview City Library or the Major County Historical Society.

Don't let distance keep you from getting involved



Attend section and committee meetings remotely via BlueJeans. Use a mobile device, phone or computer. Visit www.okbar.org/bluejeans.

EDITORIAL CALENDAR

2023 ISSUES

SEPTEMBER
Corporate Law
Editor: Jason Hartwig
jhartwig@tisdalohara.com

OCTOBER
Access to Justice
Editor: Evan Taylor
tayl1256@gmail.com

NOVEMBER
Agricultural Law
Editor: David Youngblood
david@youngbloodatoka.com

DECEMBER
Family Law
Editor: Sheila Southard
SheilaSouthard@bbsmlaw.com

2024 ISSUES

JANUARY
Litigation & Trial Practice
Editor: Roy Tucker
roy.tucker@oscn.net

FEBRUARY
Bankruptcy
Editor: Melanie Wilson Rughani
melanie.rughani@
crowedunlevy.com

MARCH
Estate Planning
Editor: Evan Taylor
tayl1256@gmail.com

APRIL
Indian Law
Editor: Sheila Southard
SheilaSouthard@bbsmlaw.com

MAY
Natural Resources Law
Editor: Jason Hartwig
jhartwig@tisdalohara.com

AUGUST
Real Property
Editor: David Youngblood
david@youngbloodatoka.com

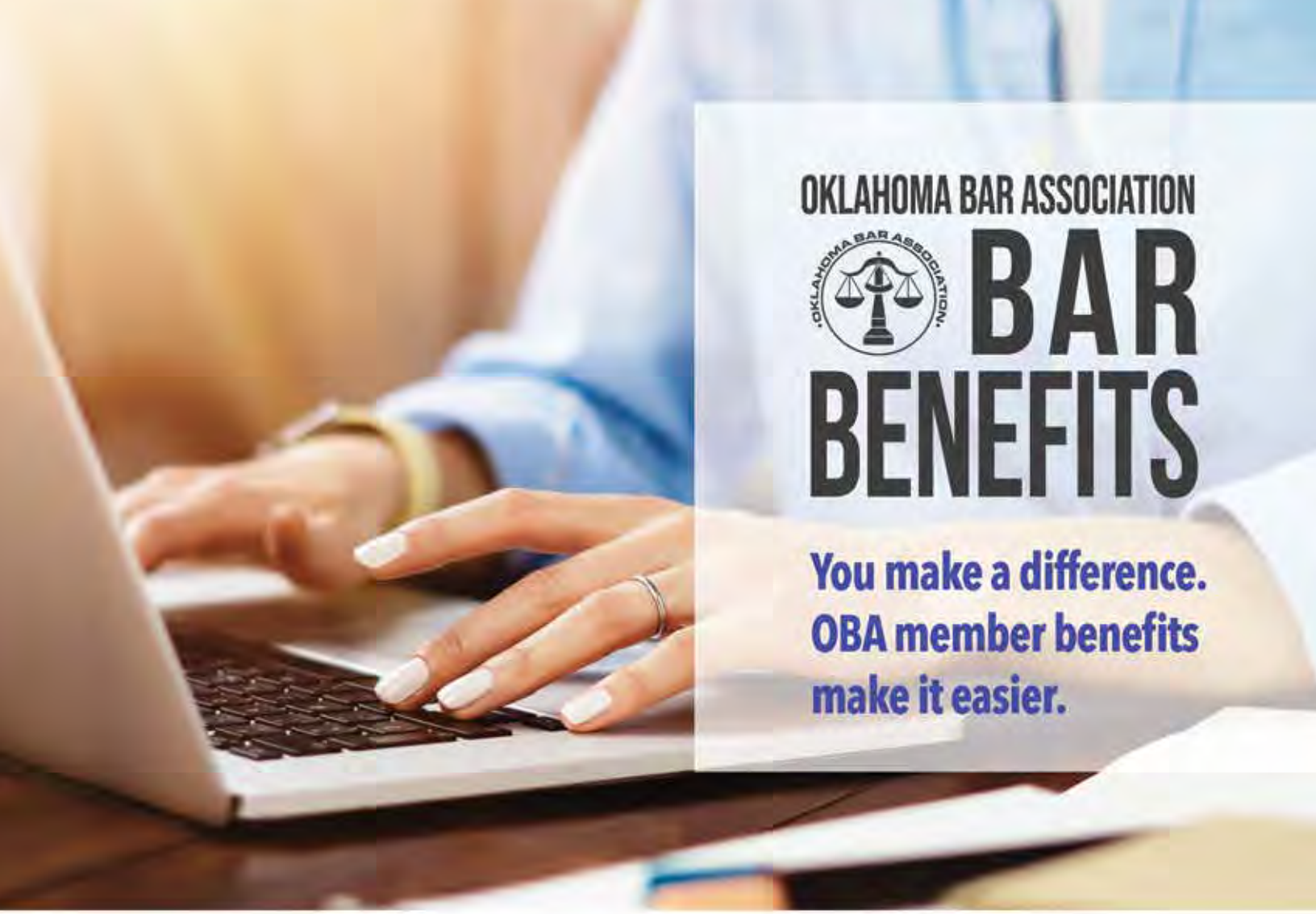
SEPTEMBER
Women in Law
Editor: Jana Knott
jana@basslaw.net

OCTOBER
Aviation Law
Editor: Melanie Wilson Rughani
melanie.rughani@
crowedunlevy.com

NOVEMBER
Military & Veterans
Editor: Roy Tucker
roy.tucker@oscn.net

DECEMBER
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com

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



OKLAHOMA BAR ASSOCIATION

BAR BENEFITS

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

MYOKBAR

DID YOU KNOW?

Members can update their roster information and access Fastcase, HeinOnline, the OBA member directory and get quick links to their committees and sections. Plus, MyOKBar Communities serves as the main communication tool for committees and sections, and it automatically links with members' MyOKBar account so information is synced.

CHECK IT OUT

Log in with the "MyOKBar Login" link at the top of www.okbar.org.

Classified Ads

SERVICES

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

HANDWRITING IDENTIFICATION
POLYGRAPH EXAMINATIONS

Board Certified	State & Federal Courts
Diplomate - ABFE	Former OSBI Agent
Fellow - ACFEI	FBI National Academy

Arthur Linville 405-736-1925

DENTAL EXPERT WITNESS/CONSULTANT

Since 2005
(405) 823-6434
Jim E. Cox, D.D.S.
Practicing dentistry for **35** years
4400 Brookfield Dr., Norman, OK 73072
JimCoxDental.com
jcoxdds@pldi.net

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

CONSULTING ARBORIST, TREE EXPERT WITNESS, BILL LONG. 25 years' experience. Tree damage/removals, boundary crossing. Statewide and regional. Billlongarborist.com. 405-996-0411. https://billlong-arborist.com.

SERVICES

FORENSIC DOCUMENT EXAMINER
JAN SEAMAN KELLY

Phone: 702-682-0529
Email: forensicdynamicsllc@gmail.com
Website: www.forensicdynamics.org

- Thirty-Five Years Experience
- Completed two-year training program with U.S. Postal Service in San Bruno, CA
- Certification: American Board of Forensic Document Examiners (ABFDE)
- First forensic document examiner at the Oklahoma County District Attorney Office
- Published books and numerous articles on various facets of forensic document examination Experience in Civil and Criminal Examinations-Wills, Deeds, Contracts, Medical or Business Records
- Testified in Federal, State and Administrative Courts
- Fully-equipped forensic laboratory including a VSC-6000 and an ESDA
- Examination of Handwriting, Hand Printing, Signatures, Stamp and Seal Impressions
- Restoration of Obliterated Writing, Alterations, Charred Documents
- Reconstruction of Shredded Documents
- Recovery and Examination of Indented Writing

ESTATE PLANNING DOCUMENT PREPARATION: We prepare all of your back-office Estate Planning documents. Wills, Trusts, Powers of Attorney, Living Wills, etc. Please contact Patrick Wells at 918-392-2445 or pwells@stronglyfe.com.

CONSTRUCTION EXPERT FOR CASE ASSESSMENT AND EXPERT TESTIMONY. 34 years' experience in commercial construction. Accredited by NASCLA. Boe Holland, 405.896.6871, boe@hollandconstructiongroup.com.

SERVICES

REALTY WERKS, INC.
APPRAISAL & CONSULTING SINCE 1987
Tax Appeal • IRS Settlement • Divorce • Estate
Probate • Trust • Bankruptcy • Civil Litigation
Diminution of Value • Retrospective Value
Carl S. Schneider carl@911propertyreport.com
office 918 615-9961 cell 918-607-6694

OFFICE SPACE

OFFICE SPACE FOR RENT IN OKLAHOMA CITY one block north of federal courthouse. Includes conference room, internet, receptionist and parking. For more information, please call 405-239-2726.

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

OFFICE BUILDING FOR RENT IN OKLAHOMA CITY, 2721 NW 50th St., approximately 1,500 square feet. Front door parking, all electric, paid water, new heat and air system. $800 a month. Contact Joe Farris 405-740-3391.

FOR SALE

Sentencing in Oklahoma, Eighth Edition (2023)
by Bryan Lester Dupler
The Practical Guide for Judges and Attorneys
$40.00, incl. tax and shipping
Newly revised, completely updated 5 year Edition
Free annual updates; firm and agency discounts
Email orders to: oksentencinglaw@gmail.com

POSITIONS AVAILABLE

ATTORNEY

Downtown Tulsa AV-rated firm has an immediate opening for a licensed attorney, licensed to practice in the State of Oklahoma. Candidates must have the following:

1. 5+ years' experience as an attorney; and
2. Appellate Practice experience;
3. Excellent writing and briefing skills a must.

Please send resume via email to resume@rfrlaw.com, with the word ATTORNEY on the subject line.

ESTABLISHED SMALL DOWNTOWN TULSA LAW FIRM within walking distance of state and federal courthouses seeks an attorney for office sharing arrangement. Interested individuals should send a resume to advertising@okbar.org with the subject line "Position DG."

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

AV RATED DOWNTOWN OKC LITIGATION FIRM whose primary areas of practice are insurance defense, products liability and transportation defense, seeks an Associate Attorney with 5+ years of experience. The position will encompass all phases of litigation, including pleadings and motion practice, discovery, depositions, investigation, research and trial. Compensation commensurate with experience. Please submit cover letter, resume, writing sample and references to Box EA, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

MCDANIEL ACORD, PLLC IS RECRUITING A LITIGATION ASSOCIATE ATTORNEY for the firm's Edmond office to assist our clients in civil litigation within a strong team setting that focuses on client service and maximizing outcomes. Our practice includes challenging procedural and technical issues, and the successful candidate will possess strong analytical and advocacy skills. We use the latest technology to maximize efficiency. Our Firm provides excellent benefits and rewards performance. We are looking for the right attorney to join our team who will take pride in the service we deliver and fit within our family-oriented, friendly, and low-key firm environment. Candidates should have 2 to 5 years litigation experience that reflects skill in legal research, drafting memoranda, briefs and discovery, taking depositions, managing document production, and oral argument. Candidates should submit a recent writing sample and CV to smcdaniel@ok-counsel.com.

AT LIBERTY MUTUAL, we're committed to delivering exceptional legal services to our customers around the world, working to uphold and protect our policyholders' rights and positively impacting our business. Our Associate Attorneys provide legal support and expertise to trial attorneys across the country as they represent Liberty Mutual and our policyholders in civil litigation and workers' compensation matters. You'll join a diverse team that values a healthy work/life balance, and you'll enjoy benefits that include eligible performance bonuses, 20 days of flexible time off each year, personal holidays, a pension plan and a 401(k) plan with matching contributions. If you're looking for a place to build a long-term career while making a positive difference – with no travel required or personal legal appearances – consider joining our legal team. For more information and to apply, visit https://bit.ly/3OehaJH.

ADLER, MARKOFF & ASSOCIATES, A 26 YEAR OLD PERSONAL INJURY AND CRIMINAL LAW FIRM located on Lake Hefner, is seeking an experienced litigation attorney. Preference will be given to those with experience in the areas of Insurance Defense or Personal Injury. Retirement plan match and 100% of paid health care are included in compensation package. This is a great opportunity for the right person to join our team of talented lawyers. Please send resume and inquiries to ccollins@amalaw.com.

POSITIONS AVAILABLE

DISTRICT 21 DISTRICT ATTORNEY'S OFFICE is seeking a full-time Assistant District Attorney to serve in its Civil Division, which is responsible for the representation and defense of the governing bodies and other elected officials and employees in Cleveland, McClain, and Garvin Counties. The Civil Division also represents the elected District Attorney and State of Oklahoma in various civil matters, including, but not limited to, the review and approval of expungement requests, the prosecution of civil asset forfeitures, and mental health civil commitment proceedings. At least three to five years of experience preferred. Knowledge and/or experience with labor and employment, state purchasing requirements, civil asset forfeiture, and the Oklahoma Governmental Tort Claims, Open Meeting, and Open Records Act a plus but not required. Full state benefits package provided. Please submit a cover letter and resume to kelly.butts@dac.state.ok.us.

LEGAL AID SERVICES OF OKLAHOMA, INC (LASO) is urgently seeking PARALEGALS and ATTORNEYS in the OKC and Tulsa areas. You'll be a great fit if you're passionate about ensuring access to justice for all Oklahomans. LASO offers you exceptional benefits that include employer-paid health and dental insurance, an employer-funded pension, generous paid leave, and training, just to name a few. But the very best benefit we can offer you is the chance to make a difference by joining our mission.

REQUIRED SKILLS: • Provide high-quality legal assistance to eligible clients on matters pertaining to their situations and civil matters. • Strong interpersonal skills: able to work well with a wide range of people. • Legal research skills. • Ability to prepare for and present evidence at trial. • Strong organizational and time management skills. • Able and willing to continue professional development. • Proficiency in PC applications.

REQUIRED EXPERIENCE: Knowledge of and expertise of the law and legal system regarding civil legal issues.

If you are interested in a rewarding career working to provide equal access to justice for all, you are encouraged to apply. Please contact or send your resume to Michael Figgins at Michael.Figgins@LAOK.org.

POSITIONS AVAILABLE

THE OKLAHOMA OFFICE OF THE ATTORNEY GENERAL has multiple attorney openings in a variety of units, including:

- Organized Crime Task Force
- Multi-County Grand Jury
- Litigation
- Legal Counsel
- Pharmacy Benefits Management
- Solicitor General

Applicants must be, or be eligible to become, licensed attorneys in the State of Oklahoma. To apply, please send cover letter, resume, and writing sample to resumes@oag.ok.gov and indicate which particular job and unit you are applying for in the subject line of the email. For a more detailed review of each of our positions, go to www.oag.ok.gov and click the 'Careers' tab.

THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA in Muskogee, OK is seeking applicants for one or more Assistant U.S. Attorney positions for our Criminal Division. AUSAs in the Criminal Division have the unique opportunity to represent the United States of America by directing the investigation and prosecution of federal offenses occurring within the Eastern District, including Indian Country. Salary is based on the number of years of professional attorney experience. Applicants must possess a J.D. degree, be an active member of the bar in good standing (any U.S. jurisdiction) and have at least one (1) year post-J.D. legal or other relevant experience. Prior violent crime prosecution and jury trial experience is preferred. AUSAs may live within 25 miles of the district, which includes much of the Tulsa metropolitan area. See vacancy announcement 23-12029252-AUSA at www.usajobs.gov (Exec Office for US Attorneys). Applications must be submitted online. See How to Apply section of announcement for specific information. Questions may be directed to Jessica Alexander, Human Resources Specialist, via email at Jessica.Alexander@usdoj.gov. This is an open, continuous announcement that will close no later than December 26, 2023. Applications will be reviewed on a rolling basis, with the first review no earlier than 5 days after the date of this announcement. Additional reviews of applications will be conducted periodically, after the initial review, until all positions are filled.

POSITIONS AVAILABLE

THE LAW FIRM OF ATKINSON, BRITTINGHAM, GLADD, FIASCO & EDMONDS is currently seeking an associate attorney with a minimum of 2 to 5 years of experience in litigation. The associate in this position will be responsible for court appearances, depositions, performing discovery, interviews and trials in active cases filed in the Oklahoma Eastern, Northern, and Western Federal District Courts and Oklahoma Courts statewide. Atkinson, Brittingham, Gladd, Fiasco & Edmonds is primarily a defense litigation firm focusing on general civil trial and appellate practice, insurance defense, medical and legal malpractice, and Native American law. Salary is commensurate with experience. Please provide your resume, references and a cover letter including salary requirements to Carol J. Allen at callen@abg-oklaw.com.

DISTRICT 27 HAS IMMEDIATE OPENINGS FOR ASSISTANT DISTRICT ATTORNEY in Adair, Cherokee, Wagoner and Sequoyah counties. This candidate will perform a variety of professional duties including prosecution of misdemeanors and felonies. Pay range $55k-$85k based on experience. Full State Benefits. Please submit resume to diana.baker@dac.state.ok.us.

METRO AREA LAW FIRM SEEKING OIL AND GAS ATTORNEY to join our dynamic practice group. Ball Morse Lowe has established a well-respected, multi-basin practice and is continuing to expand its team in its Oklahoma City office. Benefits include a competitive salary/fee structure commensurate with experience including bonus opportunities, full health benefits, 401K match, full back-end client support and support staff, and the opportunity for practice growth. Please send cover letter, resume and references to office@ballmorselowe.com. Please be prepared to provide writing sample upon request. Oklahoma license required, as well as a minimum of 3-5 years direct experience working oil and gas.

SMALL AV RATED NORTH OKC/EDMOND FIRM looking to add two associates with an eye to expanding scope of practice. Send resume and compensation requirements to Jon Hester, 16311 Sonoma Park Drive, Edmond OK 73013 or jhester@hesterlaw.net.

POSITIONS AVAILABLE

NEW POSITION OPEN WITH DISTRICT 17 DA'S OFFICE FOR AN ASSISTANT DISTRICT ATTORNEY. Located only a short drive from majestic Broken Bow State Park/ Hochatown, an outdoorsman's paradise. Fastest growing area in Oklahoma! Requires a Juris Doctorate from an accredited law school. Salary based on level of experience. Must be admitted to the Oklahoma state bar and be in good standing. Submit a resume by email: tammy.toten@dac.state.ok.us. Office: 580-286-7611, Fax: 580-286-7613. DEADLINE 10/02/2023.

SOUTH COUNTY LAW FIRM, AN OKMULGEE BASED LAW FIRM, is seeking a full-time family law attorney for our growing family law division! We are an innovative team and hold steadfast to our core values of empathy, efficiency, empowerment and kindness. We empower people to take control of the legal realities they face so they can take control of their life! We maximize the use of technology, especially with maintaining excellent client communication, always striving to provide those we serve with an outstanding client experience. We strongly encourage applicants to visit our website to learn more about the services we provide, meet our team, see where we work, and get a better feel for our mission. Our work environment is sacred, and we adhere to an internal code of compassion and mutual respect for our fellow teammates. Compensation is commensurate with experience and qualifications. We provide an array of excellent benefits including profit sharing and bonus structures. Experience with family law matters and a genuine heart for helping people navigate life's bumpy roads is a must. Send resumes and cover letters to dru@southcountylawok.com.

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

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE SEEKING ATTORNEYS

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

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

Salary for this position starts at $66,900; commensurate with qualifications and agency salary schedule.

OIDS provides a comprehensive benefits package designed to support our employees and their dependents, including:

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

Applications must be submitted online. Visit www.oids.ok.gov or https://bit.ly/3lsI70r to view job announcements and apply online. This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled.

SHOW YOUR CREATIVE SIDE ON THE BACK PAGE

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

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

OBA Ethics Award Namesake was a 'Lawyer's Lawyer'

By Bob Burke

THE OBA ETHICS AWARD is named for the late John Shipp of Idabel. It may be an overused expression, but John was truly "a lawyer's lawyer." His integrity was unquestioned. He was a role model for professionalism. His reverence for the rule of law was undisputed.

When I graduated from law school and returned to Broken Bow in 1979, John was the leader of the 12 lawyers in McCurtain County and the uncrowned king of barristers and judges in neighboring Choctaw and Pushmataha counties. When I had questions about procedure or local rules, the judges told me to ask John. I did. He would stop what he was doing and sit with me in the courtroom and take me, step by step, through a case. His teaching was both practical and ethical. His friendliness and dignity were contagious.

We formed the Tri-County Bar Association, and John provided the meeting place – his cabin at the end of a very rough road on Mohawk Lake near Idabel. Any time we had a function, John invited Supreme Court justices and other appellate judges. We ate good and told stories into the wee morning hours. As the youngest lawyer in the three counties, I was assigned to monitor the Idabel Airport and ferry justices such as Marian Opala, Ralph Hodges and Rudy Hargrave to Mohawk Lake.

The Shipps were one of the most prominent families in McCurtain County. John's mother, Martha, descended from the Dierks brothers who came to the area shortly after the turn of the 20th century to establish a major forestry company, later purchased by Weyerhaeuser. John's father, Ed Shipp, was county attorney and became president of the Idabel National Bank.

In 2006, a new entrance to the Oklahoma Bar Center in Oklahoma City was dedicated to honor John Shipp's impact upon the legal profession in Oklahoma and his high ethical standards. The plaza contains a lighted water feature and a bronze plaque with a relief of John.

John was co-valedictorian of his high school class in 1960. He earned a bachelor's degree from Austin College in Sherman, Texas, and received his J.D. from the OU College of Law in 1965. He returned to Idabel to practice law. He later was chairman of the board of the family bank.

John served the OBA in so many ways. He was a member of the OBA Board of Governors and was OBA president in 1985. He served two terms on the OBA Professional Responsibility Commission and was chief master of the Professional Responsibility Tribunal. He was also a member of the Board of Directors of both the Oklahoma Foundation for Excellence and the Oklahoma Heritage Association.

After 31 years of private practice, John looked for a new challenge and became executive director of the OBA on Jan. 1, 1998. Frankly, John did not need to work, but he truly enjoyed his position with the OBA. He knew so many judges and lawyers around the state. He saw the executive director's job as an opportunity for him to give back to the legal profession.

John's wife, "Barty," wanted to maintain their home in Idabel, so she and John often flew their twin-engine Beechcraft between Idabel and Norman. On Dec. 6, 1998, John was flying alone. An experienced pilot, he began an instrument approach to Max Westheimer Airport in Norman. A cold front dropped the temperature seven degrees in a matter of minutes as the control tower lost contact with John. Wind shear or something bad caused the plane to crash. John was killed. He was 56 years old.

Mr. Burke practices in Oklahoma City. He is a member of the Oklahoma Hall of Fame and has written 154 historical nonfiction books.

oba cle
continuing legal education

CIVIC CENTER
MUSIC HALL
201 N Walker Ave, OKC

Women in Law Conference

SEPTEMBER 22, 2023
OKLAHOMA CITY

The OBA Women in Law Section will be hosting their 2023 Women in Law Conference at the Civic Center Music Hall in Oklahoma City on Sept. 22, 2023. This year's guest speaker will be Chandler Baker, a New York Times bestselling author. Her works include "*Cutting Teeth*," "*The Husbands*" and "*Whisper Network*," which was a Reese Witherspoon Book Club Pick. Ms. Baker attended law school at the University of Texas at Austin and worked as a lawyer for a major sports franchise and as a corporate attorney. The Women in Law Conference will be worth six hours of MCLE, and the Mona Salyer Lambird Spotlight Awards will be presented at the conference.

MAKE SURE YOU SAVE THE DATE!

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

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

FREE CONFIDENTIAL ASSISTANCE

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

- Clif Gooding, Oklahoma Bar Association Member

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

Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

800-364-7886 | WWW.OKBAR.ORG/LHL