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THE OKLAHOMA BAR Journal

Volume 97 — No. 6 — August 2026

GENERATIONS OF JUSTICE

250

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2026 OBA ANNUAL MEETING

OBA CLE
Continuing Legal Education

WEDNESDAY,
OCTOBER 21, 2026
Noon - 1 p.m.

Webcast Only

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FEATURED SPEAKER:
Lenné Eidson Espenschied,
Lawyer, Author, National Speaker and Professor

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ABOUT OUT SPEAKER:
Lenné Eidson Espenschied has earned her status as one of the two most popular contract drafting speakers in the U.S. by continually striving for excellence and providing innovative, practical skills-based training for transactional lawyers. She practiced law in Atlanta, Georgia for 25 years, focusing on corporate and transactional representation of technology-based businesses. She is the author of two books published by the American Bar Association: *Contract Drafting: Powerful Prose in Transactional Practice* (ABA Fundamentals, 3rd Ed. 2019) and *The Grammar and Writing Handbook for Lawyers* (ABA Fundamentals, 2011). After graduating from the University of Georgia School of Law magna cum laude, Ms. Espenschied began her legal practice at the firm now known as Eversheds Sutherland; she also served as Senior Counsel in the legal department of Bank of America before eventually opening her own law office. As a law professor, Ms. Espenschied taught commercial law, contracts and contract drafting. Her passion is helping lawyers acquire the skills they need to be successful in transactional practice.


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THE OKLAHOMA BAR Journal

contents

August 2026 • Vol. 97 • No. 6

THEME: Legal Potpourri

Editor: Evan Taylor

FEATURES

PLUS

DEPARTMENTS

GENERATIONS OF JUSTICE
250
YEARS STRONG
2026 OBA ANNUAL MEETING

PAGE 49 – Annual Meeting

America's 250th Anniversary

By Chief Justice Dustin P. Rowe

ON JULY 4, 1776, Thomas Jefferson's powerful words became the blueprint of America's promise:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

This year marks our nation's Semiquincentennial – the 250th anniversary of the signing of the Declaration of Independence. I recently visited Independence Hall in Philadelphia and stood in the very room where the Declaration of Independence was signed. I was reminded that at the time it was written, the ideals of the Declaration of Independence were not fully realized. The Declaration of Independence reflected a promise of what America would become.

Our founding fathers believed in these ideals so strongly that they mutually pledged to each other their lives, their fortunes, and their sacred honor. The signers of the Declaration of Independence did not know if America would become the beacon of freedom they envisioned or whether our young country would collapse under the weight of the Revolution. We remain inspired by their courageous pursuit of liberty under the shadow of impending personal peril.

Justice Dustin P. Rowe serves as chief justice of the Oklahoma Supreme Court.

As members of the legal profession, we uniquely understand our founding documents and the importance of the rule of law. With that understanding comes a responsibility to educate the next generation. By investing in civics education, we strengthen public trust upon which our judiciary and the rule of law depend.

To commemorate our country's anniversary, I encourage judges and attorneys to volunteer as scholars for the National Constitution Center's Scholar Exchange Program.[1] The Constitution Center develops comprehensive lesson plans on a wide range of topics – including the Declaration of Independence and the judiciary. By participating in this program, judges and attorneys can educate the next generation on our country's founding and communicate why the rule of law is so important to the freedoms we share. Oklahoma Judges Schneiter and Whalen recently participated as scholars and noted that the lessons were well received by students and teachers alike. Additional information about the Scholar Exchange Program can be found on the National Constitution Center's website.[2] To volunteer as a scholar, email Director of Student Programs Kevin Lynch at klynch@constitutioncenter.org. Participation is flexible, allowing you to select virtual sessions that align with your schedule, and no ongoing commitment is required.

It is our responsibility to preserve the ideals our founding fathers risked their lives to forge. Thank you for your commitment to these ideals and for your service to the great State of Oklahoma. The relationships we build today ensure a stronger judiciary tomorrow.

ENDNOTES

1. The National Constitution Center is a private, nonpartisan, nonprofit organization.
2. https://bit.ly/451rMTI

THE OKLAHOMA BAR Journal

Volume 97 — No. 6 — August 2026

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Bar News in a Minute

PHOTO SPOTLIGHT: SUMMER FUN AT THE ANNUAL SHEEP CREEK DINNER

Judges and bar leaders from across the state gathered in June for the Pontotoc County Bar Association's annual Sheep Creek celebration and dinner. Retired Pontotoc County Judge Tom Landrith (center) received his pin recognizing 50 years of OBA membership during this year's event, which was also attended by Chief Justice Dustin Rowe and Justice Noma Gurich.

LHL DISCUSSION GROUPS TO HOST SEPTEMBER MEETINGS

Monthly Discussion Group: The Oklahoma City Lawyers Helping Lawyers monthly discussion group will meet Sept. 3 at the office of Tom Cummings, 701 NW 13th St. The Tulsa group will meet Sept. 10 at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200.

Women's Discussion Group: The Tulsa women's discussion group will meet Sept. 15 at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200; the Oklahoma City women's discussion group will meet Sept. 24 at the first-floor conference room of the Oil Center, 2601 NW Expressway.

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

IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, Sept. 7, in observance of Labor Day.

Be sure to docket these other upcoming events as well:

- The annual OBA Legislative Debrief is set for Friday, Aug. 21. Please save the date; online registration will be open soon!
- The 2026 OBA Annual Meeting will be held at the Skirvin Hotel in Oklahoma City on Nov. 11-13. Registration and more information will be coming soon.
- The inaugural OBA Heroes Day will take place at the Oklahoma Bar Center on Nov. 11. Volunteer attorneys are needed to assist veterans and service members with a variety of legal needs. CLE is available, and lunch will be provided. Sign up to volunteer online: https://bit.ly/4pwL9NX.

TU COLLEGE OF LAW AND OBA CLE RECOGNIZED FOR COLLABORATIVE PROGRAM

The TU College of Law and the OBA CLE Department were recently jointly recognized with the Circle of Excellence Gold Award in the One-Day Special Events category from the Council for Advancement and Support Education (CASE). This award was presented to the groups for their collaboration on the program, "The Digital Edge: Business, Tax, and Legacy Strategies Summit." The purpose of this event was to engage high-capacity alumni and professional advisors.

"This award reflects what's possible when a bar association and a university align their strengths," said Gigi McCormick, director of legal education programs for the OBA. "TU brought the academic rigor and alumni network; OBA brought statewide reach and CLE infrastructure. The result was a program that gave practicing attorneys and other professionals real value while opening doors for TU that a traditional advancement event never could."

The awards committee received more than 4,185 entries from members in 33 countries. Circle of Excellence Awards recognize "exceptional achievement in advancement services, alumni relations, communications, fundraising, and marketing."

REBEKAH TAYLOR APPOINTED SPECIAL JUDGE

OU College of Law Professor Rebekah C. Taylor was recently appointed as a special judge for Cleveland County and will begin serving in that role in August. Professor Taylor has been a member of the OU faculty since 2017, where she teaches and supervises student attorneys in the college's criminal defense legal clinic. Prior to joining the faculty, she began her legal career as an assistant district attorney in the Cleveland County District Attorney's Office, later entering private practice, where she represented clients in criminal defense, family law, guardianships, juvenile matters and expungements. She is a 2007 graduate of the OU College of Law.

LET US FEATURE YOUR WORK

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

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

The Use and Abuse of Hearsay in Family Law Matters

By Jessica Tueller and Monica Dionisio

IN NOVEMBER 2025, 12 O.S. §2803.3 ENTERED INTO EFFECT, creating an exception to the hearsay rule for statements pertaining to domestic abuse.[1] Specifically, this section provides:

A statement that purports to narrate, describe, report, or explain an incident or incidents of domestic abuse as defined in Section 60.1 of Title 22 of the Oklahoma Statutes:

1. Made by the victim of domestic abuse to a law enforcement officer within one (1) week of the incident;
2. On an application for a protective order by the victim of domestic abuse within one (1) week of the incident; or
3. Given as testimony of the victim of domestic abuse made at a hearing on application for a protective order,

shall be admissible in pre-trial or post-trial criminal and juvenile delinquent domestic abuse prosecutions including preliminary hearings, prosecutive merit hearings, or hearings on the revocation of probation or acceleration of a deferred judgment.[2]

An earlier article in this journal raised constitutional and other concerns about the implications of this provision for criminal proceedings, to which the section is most immediately applicable.[3] The article also flagged that, although the provision "is inapplicable to family and domestic matters," it might indirectly affect matters such as child custody and visitation.[4] Specifically, the article suggested that the interaction of 12 O.S. §2803.3 with 43 O.S. §109.3 (which requires evidence of domestic abuse to be considered in custody and visitation proceedings), might facilitate the indirect introduction of these out-of-court statements into civil proceedings.[5] Although this issue has not yet been litigated due to how recently this provision was passed, practitioners expect that this statute will raise new evidentiary challenges in family matters.

Even as the legislature has made moves that appear to make hearsay more flexible in family matters, certain legislators have put forward bills that propose to restrict the admissibility of hearsay in family law proceedings. In the second session of the 60th Legislature (2026), SB 1760 was introduced, which would amend 10A O.S. §1-4-601 to eliminate the use of hearsay in deprived proceedings, as well as raise the standard of proof in these proceedings from the preponderance of the evidence to beyond a reasonable doubt.[6] At the same time, in the House, HB 3484 was introduced, which, among other things, would amend 10A O.S. §1-4-203 to prohibit the admission of hearsay in review hearings concerning the removal of children by the Oklahoma Department of Human Services, and raise the standard of proof in these hearings from preponderance of the evidence to clear and convincing evidence.[7] Although neither bill has made it out of committee, these proposals demonstrate that there are competing impulses in the Legislature when it comes to hearsay and family law.

This article draws on both Oklahoma evidence law and federal constitutional law to contextualize these diverging developments. In doing so, this article aims to inform practitioners of the existing balance of rights and interests, as well as to anticipate how changes like 12 O.S. §2803.3 could present new challenges that potentially disrupt that balance.

OKLAHOMA EVIDENCE LAW

Developments such as 12 O.S. §2803.3 must be understood in the broader context of Oklahoma evidence law, and specifically how Oklahoma evidence law intersects with family law. Across the U.S., family courts' approach to hearsay in proceedings affecting children is far more flexible than the approach of courts in other contexts, such as criminal proceedings.[8]

One of the driving forces behind the relaxation of evidence rules in family matters is the desire to hear from children without including them in the proceedings. Rarely does a family court call the affected child to give evidence.[9] Instead, hearsay is often admitted through a range of general hearsay exceptions, most notably the exceptions for present sense impressions, excited utterances, state of mind, statements made for medical diagnosis or treatment, and recorded recollections.[10]

Hearsay statements, from children as well as other sources, often arrive in front of family courts via *in camera* interviews or via the admission of reports by guardians ad litem.[11] Both methods have long been used in Oklahoma to facilitate the court's assessment of children's experiences and preferences. Evidence of domestic abuse of the sort admitted pursuant to 12 O.S. §2803.1 may find their way into admission in family law cases both in the courtroom and by way of these mechanisms.

In Camera *Interviews*

In camera interviews – that is, private sessions where the judge asks questions of a child – have become the mechanism by which children may testify directly when expressing a preference as to custody and/or visitation.[12] No specific age is set by statute. Instead, it is left to the judge's discretion whether the child will be permitted to give evidence in this manner. Because they are not parties to the litigation, these statements are not subject to characterization as non-hearsay, as defined by the Oklahoma Evidence Code.[13]

Not only are family courts allowed to give weight to evidence gathered in this manner, but they are also allowed to conduct *in camera* interviews in chambers without the parents or their attorneys present.[14] In *Hogue v. Hogue*[15], a mother challenged, among other things, the weight placed upon her son's testimony and the exclusion of the parties' attorneys from the *in camera* testimony of the parties' son.[16] The Court of Civil Appeals affirmed that the preference of the parties' son was intelligent and articulate and was carefully considered by the trial court.[17] The appellate court further found the trial court was justified in excluding the parties' attorneys based on the trial court's belief the child would be more open and candid without the attorneys present.[18]

Parents may not only be excluded from the *in camera* interviews, but they may also be denied later access to the interview transcript. *In Ynclan v. Woodward*, the court set forth guidelines for trial court's interviews of children in camera and held that, absent an appeal by either party, due process does not require either parent to have access to the transcript.[19] The Court of Civil Appeals enumerated at length the purposes of conducting the *in camera interview* in private, including but not limited to elimination of the harm to a child from exposure to direct and cross examination, enhanced candor and minimization of trauma.[20] Relevant to this article, the court also addressed the balance of the concepts of the adversarial system and the due process rights of parents against the welfare of the child and the court's interest in hearing the child.[21] Interestingly, the Court of Civil Appeals also addresses a child's freedom of expression and their right to a degree of privacy that preserves that freedom.[22]

In a concurring opinion, Justice Taylor and Justice Opala further emphasized the preservation of basic fundamental due process in child custody proceedings, both for children and parents.[23] Notably, the focus of the concurring opinion rests on the preliminary requirement of the trial court to decide whether the best interests of the child are served by an *in camera* interview and, upon objection by a parent, the conducting of a full hearing where objections are heard a clear ruling is made and reflected in the appellate record.[24] In contrast, a dissent by Justice Watt pointed to what he perceived to be a major error in the majority's ruling that the transcripts will be made available to parents upon a mere intent to appeal.[25] Justice Watt reasoned that the transcripts should remain sealed and subject to viewing only by the trial court and the appellate court, ensuring due process for parents but not jeopardizing the trust and well-being of children.[26] He further stated that

The variety of hearsay involved in the testimony of children has and continues to make substantial impact in family law cases.

this requirement would further the weaponizing of children in family law cases.[27] Neither the majority nor the concurring and dissenting justices, however, addressed the ongoing effect of such heavy reliance upon hearsay itself and the parents' lack of opportunity to challenge it in an evidentiary sense.

The variety of hearsay involved in the testimony of children has and continues to make substantial impact in family law cases. In *Lowry v. Lewis*,[28] the court undertook an appeal wherein a mother alleged the preference of the child (expressed *in camera*) was not, on its own, sufficient to justify a change in custody. Distinguishing the issue of modification from an original custody decision, the court affirmed prior cases that found it is unnecessary for a parent to meet the burden of proof for modification of custody in *Gibbons v. Gibbons*[29] as long as the child's preference is well-founded as set forth in *Nazworth*.[30]

While the courts continue to focus primarily on giving children with an intelligent preference a path to be heard within litigation, the balance of their rights and those of their parents continue to be a source of question and conflict. The process set forth in 43 O.S. §113 does protect children from being forced to testify in front of adversarial parents; however, it does not insulate children from being coached by one or both parents prior to the interview and therefore does not ensure the preference is free of influence of litigating parents at war over physical and legal custodial rights. The process often also leaves even those parents who behave in good faith with more questions than answers and without access to the kind of evidentiary proof otherwise provided in support of legal rulings.

Guardians ad Litem

It is also not uncommon for a guardian ad litem to be appointed, even where the court is willing to hear from children directly prior to, during or after trial prior to ruling. Where a guardian ad litem is appointed, they are required to be present with the child in chambers during the child's *in camera* interview, but their role expands to include much more than mere presence in the courtroom.[31]

Since 1997, 43 O.S. §107.3 has enabled trial courts to appoint guardians ad litem (hereafter referred to as GALs).[32] The GAL is an officer of the court, appointed to "objectively advocate on behalf of the child."[33] The GAL is vested with a number of investigative responsibilities and submits factual reports with their findings to the court to assist the court in determining the best interests of the child.[34] The GAL is required to maintain "as much as possible" confidentiality and is not subject to discovery.[35]

The GAL reports occupy a unique place in Oklahoma evidence law. While the best interest determinations remain with the trial court, the GAL's findings are often the mechanism by which information outside the court comes in, as well as the thoughts, feelings and preferences of the children who are the subject of the litigation.[36] The report could also include allegations of domestic abuse, specifically those of the type covered in 12 O.S. §2803.

A GAL is treated differently than any other witness in a case. As an "arm of the court", a GAL is, by default, assumed to be neutral. Therefore, the amount of access they have to the investigative process and sensitive information must be weighed against the fact that they cannot be subjected to discovery, including depositions. This routinely results in ripe disputes about the propriety of evidence being admitted and the proper weight to give the GAL's findings and any recommendations made as to custody and visitation, which often include child hearsay and the hearsay of third parties who are collateral witnesses, either directly or by the GAL's reliance on the hearsay statements in findings and/or recommendations.

Despite the GALs' neutral role, parents have attempted to use GALs as tools in gaining an advantage, attempting to sway the GAL to or away from the parent's position. This often involves voluminous correspondence and unreasonably long lists of collateral witnesses. It can also manifest in a parent's discontent with a GAL's findings and/or recommendations becoming the basis for terminating payment to the GAL, leading to a GAL's release from the case before a decision on the merits can ever be issued and leaving the original void of opportunity for the child's best interests and/or preference to be heard.

12 O.S. §2803.3

There is now the possibility that 12 O.S. §2803.3 will compound these challenges in expediting the effect of statements made nearly automatically admissible by 12 O.S. §2803.3, even before a finding of domestic violence can be made.

Protective order matters may, but are not required to, be consolidated into domestic matters.[37] While they often are, emergency orders are frequently entered prior to that consolidation occurring, and it can be weeks or months before the case makes it to the domestic judge's courtroom.

Now, with 12 O.S. §2803.3 coming into effect, statements classified as those purporting "to narrate, describe, report, or explain an incident or incidents of domestic abuse"[38] can be entered into evidence in an emergency protective order proceeding (or a permanent one if the case is not consolidated). The result is that these statements become part of an official court record before the trier of fact in the domestic case has had any opportunity to weigh it with other evidence or gauge the credibility of the party making such statements, despite being the judge making a best interest determination.

There is a risk that filing of protective order actions will be made not only by victims in need of legal protections and safety, but also by parents seeking advantage in domestic cases and a way to deprive the other parent or guardian of custodial rights and privileges. Parents have already tried to leverage the relaxation of evidence rules in family matters when faced with *in camera* interviews and GALs. Practitioners should be aware that parents may try to take advantage of this relaxation of evidence rules with regard to protective orders as well, necessarily impacting family law proceedings as a whole.

FEDERAL CONSTITUTIONAL LAW

Exceptions to hearsay, though regularly invoked and applied in family proceedings affecting children, remain cause for concern about due process rights under the 14th Amendment.[39] As seen above, Oklahoma courts have already begun to consider how to balance the relevant rights and interests in the context of *in camera* interviews. Practitioners should expect that this same balancing will need to occur if 12 O.S. §2803.3 finds its way, as has been predicted, into family proceedings.

In this context, procedural due process rights as well as the substantive due process right of the parents to care and control of children are balanced against the government's interest in the welfare of children. U.S. courts tend not to entertain arguments about children's constitutional rights, instead vesting these rights exclusively in the children's parents.[40]

Parental Rights

The 14th Amendment protects both a parents' procedural due process rights and their substantive due process right to the custody, care, and control of their children. This right was first articulated in *Meyer* and *Pierce*,[41] and has been more recently reaffirmed in decisions like *Troxel*, which pointed to a long line of cases in which the Supreme Court of the United States has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[42]

Fundamental rights trigger strict scrutiny.[43] This does not

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.*

mean that the government cannot regulate or can never interfere with parental decision-making with regard to the custody, care, and control of children.[44] It simply means that such a government action, to be upheld as constitutional, must be a narrowly tailored means of achieving a compelling government interest.[45]

Compelling Interest

Child welfare is a compelling government interest. Each state government has a *parens patriae* power that enables it to take actions that protect individuals who are not competent to act on their own behalf.[46] Although the origins of the *parens patriae* power in common-law England were somewhat limited, it has expanded over time to give vast powers for states to act on behalf of these individuals, including children.[47] When exercising this power on behalf of a child or other incompetent individual, the state generally tries to make the decisions that the individual would make if fully competent.[48]

The interest in the welfare of the child is twofold here. First, the court needs to ensure that the outcome of the proceedings will be in the best interest of the child.[49] The best interest of the child is a fact-intensive assessment that requires the court to gather information about the child's perspective, relationships, and experiences. To do this, the court must hear from the child, provided they have reached a certain age or level of maturity.[50] In Oklahoma custody proceedings, trial courts are found to err when they do not to permit children with an intelligent preference to express them.[51] *In camera* interviews and GALs serve the interest in child welfare by enabling the court to assess the child's preferences.

As part of the best interests assessment, the court must also "consider evidence of domestic abuse, stalking and/or harassing behavior properly brought before it" and moreover must apply "a rebuttable presumption that it is not in the best interest of the child to have custody, guardianship, or unsupervised visitation granted to the person against whom domestic abuse, stalking or harassing behavior has been established."[52] Such evidence could be obtained via *in camera* interviews and GALs. The admission of protective order statements under 12 O.S. §2803.3 represents an additional avenue to obtaining potentially helpful information about domestic abuse.

Second, the court needs to protect the well-being of the child during the proceedings. The government does not want the child to be drawn too much into the conflict of their parents or the adversarial system of the court.[53] The government may also be concerned about how children who are victims of abuse might be revictimized by the legal process.[54] But even in custody cases where the child has not been abused, the judge is concerned about protecting the child from traumatization resulting from the legal proceedings.[55] Ensuring that the child does not have to testify in open court is one way of shielding them from what could be a traumatizing experience.[56] *In camera* interviews and GALs are thought to shield the child from conflict and trauma, but the admission of protective order statements under 12 O.S. §2803.3 might be considered to do the same since the child would seemingly not be required to corroborate the evidence.

Narrowly Tailored Means

There are several explanations for why the rules of evidence could be relaxed in family law proceedings, while still being a narrowly tailored interference with parental rights. First, juries are rare in the family court and judges are more trusted to assess reliability accurately and fairly.[57] Second, as a practical matter, hearsay is sometimes the only way – or at least the only way that will not be unduly time-consuming and costly – to access crucial and comprehensive information about the best interest of a child.[58] This practical concern is especially pressing in cases involving child sexual abuse.[59]

There is a danger, however, of relaxing the rules too much, in ways that are neither good nor necessary.[60] Timothy M. Tippins & Lauren K. DeLuca have asserted that the result of this relaxation is the "destruction of evidentiary integrity, the erosion of the trial process, and the immolation of due process on the altar of expediency."[61] If hearsay statements arriving in court via *in camera* interviews and the GALs are already cause for concern both about due process rights and about the reliability of evidence, the admission of protective orders statements as evidence without any additional safeguards will likely be fertile ground for constitutional challenges. Practitioners should be aware of this possibility and consider presenting additional grounds for admissibility of evidence to protect cases on appeal.

As discussed in a previous article,[62] the Oklahoma Legislature had to address a similar issue after the passage of 28 O.S. §2803.1, a statute also located in the Oklahoma Evidence Code.

Practitioners should consider whether to challenge the admission of this evidence when it appears and should also be careful not to leave their own evidence open to easy challenge.

The statute addresses hearsay statements by children, incapacitated persons or vulnerable adults used in criminal prosecution proceedings.[63] As originally written, it was successfully challenged (*see Foote v. State*)[64] based upon violation of the Sixth Amendment Confrontation Clause and its application formulated in *Crawford v. Washington*.[65] The Oklahoma Legislature, upon recommendation of the Court of Criminal Appeals in *Foote*, amended the statute later in 2023 to comply with the confrontation clause and avoid future reversals.

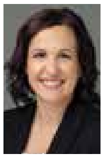
Now, outside of juvenile deprived proceedings and pre- and post-trial criminal and juvenile delinquent proceedings, statements made by a child not yet 16 years of age can only be admitted if that child, incapacitated person or vulnerable adult testifies at trial. If the witness does not testify at trial, they must be unavailable and the requirements for admissibility met pursuant to 12 O.S. §2804(B). Otherwise, the statement can only be admitted if it is nontestimonial.[66]

28 O.S. Section 2803.3 provides no such protections, leaving wide open the door for constitutional challenges. The statute would be similarly well served by implementation of similar conditions for admissibility, putting all parties in a case on notice about the standards by which these statements may be admitted. Said conditions would narrow the statute and provide protections which protect due process rights of litigants while still serving the purposes for which it was authored.

CONCLUSION

One significant effect of 12 O.S. §2803.3 to domestic matters is that, as it is currently written, statements made by adults or children in the course of domestic violence proceedings will also be admissible without evidentiary safeguards otherwise available. It is likely, if not inevitable, that the number of Oklahoma appeals will increase as a result. Practitioners should consider whether to challenge the admission of this evidence when it appears and should also be careful not to leave their own evidence open to easy challenge.

ABOUT THE AUTHORS



Monica A. Dionisio is a partner at Dionisio Sherwood. She represents clients in all areas of family law and is a fellow in the American Academy of Matrimonial Lawyers.

Jessica Tueller is an associate professor of law at the OU College of Law. Professor Tueller writes and teaches in the areas of family law; contracts; gender; sexuality and the law; and international law.

ENDNOTES

1. Okla. Stat. Ann. tit. 12, §2803.3.
2. Okla. Stat. Ann. tit. 12, §2803.3.
3. Virginia D. Henson, Margaret A. East and Mahak H. Merchant, "Admissible at What Cost? Senate Bill 607 and Its Constitutional Concerns," 97 *Oklahoma Bar Journal*, 22 (2026).
4. *Id.* at 24.
5. *Id.* at 26.
6. S.B. 1670, 60th Leg. §§1-2 (Okla. 2026).
7. H.B. 3434, 60th Leg. §2 (Okla. 2026).
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9. Patrick Parkinson and Judy Cashmore, *The Voice of a Child in Family Law Disputes*, 2 (2008).
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14. Okla. Stat. Ann. tit. 43, §113.
15. 2008 OK CIV APP 63, 190 P.3d 1177.
16. *Id.* at ¶4.
17. *Id.* at ¶8.
18. Id. at ¶12.
19. 2010 OK 29, 237 P.3d 145.
20. *Id.* at ¶12.

21. *Id.* ¶14, 16, ¶20.
22. *Id.* at ¶23.
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24. *Id.* at ¶4-5.
25. *Id.*, Watt, J. dissenting at ¶2.
26. *Id.* at ¶3-4.
27. *Id.* at ¶8.
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29. 1968 OK 77, 442 P.2d 482.
30. 1996 OK CIV APP 134, 931 P.2d 86.
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32. Okla. Stat. Ann. tit. 43, §107.3.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. Okla. Stat. Ann. tit. 22, §60.2.
38. Okla. Stat. Ann. tit. 12, §2803.3.
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63. Okla. Stat. Ann. tit. 12, §2803.1.
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65. 541 U.S. 36 (2004).
66. Okla. Stat. Ann. tit. 12, §2803.1(B).

What Trustees Need To Know About Oklahoma's New Trust Code: Key Changes and Practical Applications

By Amanda Swain

EFFECTIVE NOV. 1, 2025, Oklahoma enacted a modified version of the Uniform Trust Code (OUTC), significantly reshaping the legal landscape for trust administration in the state.[1] Unlike many legislative changes, the OUTC applies not only to trusts created after its enactment but also to existing trusts.[2] As a result, trustees may now be subject to duties and obligations that did not exist, or were less clearly defined, when the trust was originally drafted.

Prior to enactment of the OUTC, Oklahoma courts looked to the *Restatement* (Second) and (Third) *of Trusts* as persuasive/common-law guidance where the trust instrument, Oklahoma Statutes, or Oklahoma precedent did not supply the rule.[3] The OUTC replaces much of that common-law framework with codified, and in many cases non-waivable, statutory duties and requirements.[4] These changes include codified fiduciary obligations, more detailed notice and reporting requirements, and new exposure to creditor claims for certain trusts that become irrevocable at death.

This article highlights several of the most significant changes affecting trustees, with particular attention to 1) expanded duties to control costs; 2) materially enhanced notice and reporting obligations; 3) strengthened enforcement of the duty of loyalty; and 4) new creditor claim provisions applicable to trusts that become irrevocable at the settlor's death.

FIDUCIARY DUTIES

Duty to Control Costs

The requirement of a fiduciary to only incur reasonable and necessary expenses has long been a part of trust common law[5] but was not expressly required in the Oklahoma Trust Act.[6]

Change: The OUTC expressly mirrors the Uniform Prudent Investor rules[7] but also ties cost control requirements to a trustee's skills and delegation of duties to third parties.

Oklahoma Statutes Title 60, §1608.5 imposes a direct restraint on trustees: "In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee." While the duty to incur only reasonable or necessary costs has been established for some time in the common law, this provision of the OUTC ties these costs back to the skill level of the trustee, the trustee's delegation of duties to others and the trustee's special skills. If a

trustee is delegating all or most of the duties of the trustee to others, such as by engaging and paying investment advisors, attorneys and accountants, the amount of the fee payable to the trustee may need to be reduced.[8]

Enforcement of Duty of Loyalty

The duty of loyalty has always been one of the most central fiduciary duties a trustee owes to a beneficiary.[9]

Change: The OUTC codifies the common law rule that a trustee cannot profit from serving as trustee, even if there is no breach of trust in the transaction, as a way to enforce a trustee's duty of loyalty to the beneficiaries.

The addition of 60 O.S. §1609.2 addressed the enforcement of a trustee's duty of loyalty and provides that "[a] trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trustee, even absent a breach of trust." Within the duty of loyalty, a trustee "should not be allowed to use the trust as a means for personal profit other than for routine compensation earned."[10] The most common situation in which this occurs is when a trustee earns a commission from a third party for a trust-related action. Many trustees may be surprised to learn that this type of transaction is now expressly forbidden and could result in surcharge to the trustee and/or removal as trustee.[11]

REPORTING

Prior to the OUTC, Oklahoma did not impose any proactive obligation to provide information to beneficiaries but relied on statute and case law regarding a trustee's obligation to respond to a request for information. Under Okla. Stat. Ann. tit. 60, §175.23(A), the district court was granted original jurisdiction "to require accounting by trustees; to surcharge trustee; and in its discretion to supervise the administration of trusts." An action in district court could be brought by a beneficiary in an effort to obtain an accounting from a trustee.[12] For trusts not under court supervision, if a beneficiary who was an eligible or permissible distributee did not object within 180 days after being provided a copy of the trustee's accounting (together with written notice of the discharge provision), the beneficiary was deemed to have approved the accounting, and the trustee was similarly discharged from liability.[13] This accounting discharge mechanism, while providing procedural structure, placed a reactive burden on the beneficiary

While many of the underlying fiduciary principles will be familiar to experienced trustees, the specificity of the OUTC, especially with respect to reporting obligations, timelines, and creditor claims, creates new areas of potential risk.

to object rather than imposing a proactive affirmative duty on the trustee to report. The statute also tied a two-year limitations period to the trustee's accounting for the period of any breach.[14] There also existed certain common-law duties imposed on trustees to provide information, but no specific rules on form, required information or timing had ever been established in Oklahoma unless the trust agreement itself had specific timing or required form. These new notice requirements are also not waivable by the trust agreement, so while the trust agreement could impose additional notice requirements for a trustee, it cannot waive the notices required by the OUTC.[15]

Change: The OUTC imposes detailed, time-specific disclosure obligations that did not previously exist in Oklahoma.

The OUTC's disclosure requirements represent some of the most significant enhancements to trustee duties in Oklahoma. Under Oklahoma Statutes Title 60 §1608.12, the trustee must "keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests" and must "promptly respond to a beneficiary's request for information related to the administration of the trust" unless unreasonable under the circumstances. A qualified beneficiary in Oklahoma includes a current or permissible income beneficiary, a person with a vested interest in the remainder, a charitable organization expressly entitled to receive benefits of a charitable trust or the attorney general "with respect to a charitable trust having its principal place of administration in this state."[16] Note that this definition of qualified beneficiaries was expressly changed from the Uniform Trust Code model code which would include a wider range of possible remaindermen as qualified beneficiaries.[17]

Trustees now have specific timeframes for their duty to inform beneficiaries as well as a specific set of information that is required.

Upon Request

Upon request by a qualified beneficiary, a trustee must "promptly" provide a copy of the trust instrument and the trustee's report (described below).[18]

Within 60 Days

Within 60 days of accepting a trusteeship, the trustee must furnish the qualified beneficiaries with that acceptance along with the trustee's name, address and telephone number.[19]

Within 60 days of the trustee obtaining knowledge of the creation of an irrevocable trust, or when a previously revocable trust becomes irrevocable, the trustee must notify the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the beneficiary's right to request a copy of the trust instrument, and the right to the trustee's report.[20]

Upon Occurrence

The trustee must notify qualified beneficiaries upon any change in the trustee's compensation, including a change in either method or rate.[21]

Annually and Upon Termination of Trust

A trustee must send to distributees and potential distributees (note the annual notice requirement does not apply to the broader "qualified beneficiaries," although the broader group of qualified beneficiaries may request the trustee's full report) the trustee's report.[22]

What Must be Included in a Trustee's Report?

The trustee's report, as referenced in the notice provisions, must contain: "a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values." [23]

CREDITORS' CLAIMS

Change: The OUTC creates statutory exposure to creditors' claims for trustees of revocable trusts upon the death of the settlor.

Prior to the enactment of the OUTC, Oklahoma did not have any statutory or case law authority for the proposition that a trust that became irrevocable upon the settlor's death may be subject to the claims of the creditors of the settlors. The new OUTC, by contrast, specifically sets out that "the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances."[24]

This presents a particular challenge for trustees of a revocable trust after the settlor's death who are not aware of the settlor's particular creditors. There is no process in the OUTC that is corollary to the notice period in the Oklahoma probate statutes, which would provide for notice to the public and a cutoff date for creditors to present their claims. Without this process, a trustee must make reasonable efforts to identify and provide notice to any potential creditors and pay such claims prior to making distribution to the trust's beneficiaries.

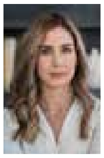
CONCLUSION

The enactment of the OUTC marks a shift from a largely common-law framework to a detailed statutory regime governing trust administration in Oklahoma. While many of the underlying fiduciary principles will be familiar to experienced trustees, the specificity of the OUTC, especially with respect to reporting obligations, timelines, and creditor claims, creates new areas of potential risk.

Trustees can no longer rely on informal practices or assumptions about prior law. Compliance with the OUTC now requires a working knowledge of statutory duties, careful attention to required notices and reports, and a proactive approach to identifying creditor claims when administering trusts that become irrevocable at death.

Attorneys who regularly advise trustees must make them aware of these changes that will bring increased scrutiny and potential liability. Trustees and the attorneys that advise them should review their existing trust administration practices to ensure alignment with the OUTC's requirements going forward.

ABOUT THE AUTHOR



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ENDNOTES

1. 60 O.S. §§1601.1-1610.3.
2. *See* 60 O.S. §1601.12 and 60 O.S. §1610.3.
3. E.g. Welch v. Crow, 2009 OK 20, 206 P.3d 599; *Showmaker v. Estate of Freeman*, 1998 OK 17, ¶ 19, 967 p.2d871, *May v. Oklahoma Bank & Trust Co.*, 2011 OK 52, ¶ 15, 261 P.3d 1138.
4. *See* 60 O.S. §1601.5.
5. *See* Restatement (Third) of Trusts: Prudent Investor Rule §227(c)(3)(1992).
6. 60 O.S. §§175.1-175.57.
7. *See* 60 O.S. §175.67.
8. *See* Unif. Trust Code §708 cmt (2023).
9. *See* Restatement (Second) of Trusts Section 170(i)(1959).
10. Unif. Trust Code §1003 cmt (2023).
11. *See* 60 O.S. §175.57.
12. 60 O.S. §175.23(C).
13. 60 O.S. §175.57.
14. *Id.*
15. See 60 O.S. §1601.5.
16. 60 O.S. §1601.3(13).
17. *See* Unif. Trust Code §103(13)(2023). An additional bill with changes to the Oklahoma Uniform Trust Code has passed and will be effective Nov. 1, 2026 that brings Oklahoma's definition of qualified beneficiaries in alignment with the Uniform Trust Code's definition.
18. 60 O.S. §1608.12(B)(1).
19. 60 O.S. §1608.12(B)(2).
20. 60 O.S. §1608.12(B)(3).
21. 60 O.S. §1608.12(B)(4).
22. 60 O.S. §1608.12(C).
23. *Id.*
24. 60 O.S. §1605(A)(2).

Why We are All *Insurance Lawyers*

By Paul Kouri

SOME HAVE SAID THAT INSURANCE LAW should be a required course in law school because it touches so many areas of legal practice. This article aims to convey that point: every attorney – no matter their preferred practice area – should also understand how insurance affects their practice.

This article focuses primarily on the intersection of insurance law with a personal injury practice, because that intersection vividly illustrates the point, but insurance law is equally important to other practice areas. After surveying personal injury law and its connection to insurance law, the article briefly outlines some of the more obvious intersections with other practice areas – to show the current law student, newly licensed attorney, or seasoned lawyer seeking to change practice areas that each year's bar journal insurance issue is a valuable resource and an invitation for you to join us "insurance lawyers" at the next insurance CLE.

PERSONAL INJURY AND INSURANCE – LIKE PEAS AND CARROTS

Personal injury and insurance law go together so well because an uninsured tort claim is generally an uncollectible tort claim. The well-rounded personal injury lawyer therefore learns how to submit and collect an insurance claim as well as how to plead – and practice *into* insurance coverage when litigating.

The basic premise of pleading into coverage is that a petition should be drafted to trigger the duty of the defendant's liability insurer to defend the defendant and, more importantly (for the injured party), to pay the loss. The simplest way to plead into coverage is to plead negligence as opposed to intentional acts. Such negligence may be on the part of the party who directly caused the injury, or you may need to add claims of negligence on the part of some *other* party or entity who should have prevented the harm. The reason we generally plead negligence is that intentional acts are (for the most part) not insurable acts. So while it can look sexy to the client when we allege that their motor vehicle accident was an aggressive act of road rage, that sounds very much like an uninsurable intentional act.[1] Usually the better practice will be to plead negligence – even gross negligence – as such conduct *is* insurable conduct.[2] The devastating consequences of drunk driving, by contrast to the road rage cases, are usually considered accidental (or gross negligence) such that allegations and proof of drunk driving will not prevent insurance coverage.[3] But these are the subtle distinctions learned along the way of your personal injury practice as that practice rubs against the realities of insurance law.

But what about claiming that the *consequences* of an intentional act were unintended and thus were insurable acts? While it used to be that the concept of transferred intent from criminal law had no place in Oklahoma insurance law,[4] the modern rule is that the natural and foreseeable consequences of an intentional act cannot *generally* be considered "accidental" for purposes of determining insurance

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coverage.[5] So again, the better practice is to couch your claims in terms of negligence.

All of the above is premised on the longstanding rule that insurance only covers "accidental" or "fortuitous" events – *as those events are viewed from the perspective of the insured person*.[6] Because of the requirement of a fortuitous event, for instance, attorneys who sue for intentional acts of nursing home abuse or school or counselor abuse, for instance, always find a way to join the employer or some other person or entity that may potentially be held liable either vicariously (assuming the bad acts fall within the scope of employment) or for negligently failing directly in some manner to prevent the harmful incident. This is because a claim that is *uncollectible* against the intentional actor may nonetheless be *collectible* against his or her employer (or any other person or entity who owed a legal duty yet failed to act *reasonably* to protect the public from such misconduct).

Having done your best to plead into coverage at the outset, it is then important to obtain a copy of all available insurance policies as soon as possible to review for a need to amend the pleadings, ensuring that

you really have pled into the *specific* coverage. Consider a case where the policy has separate coverage sections and separate policy limits for sexual assault and ordinary nursing home abuse (*e.g.*, failure to protect against ordinary harms associated with such care such as falls, bed sores, or malnutrition). After a review of such a policy, the attorney may need to amend the petition to make clear that the claims involve both sexual assault and failures to provide good care, thereby gaining potential access to two separate coverage limits – which can make the difference in achieving a decent settlement on a difficult case.

Sometimes the opposite problem is present. For instance, the petition may have focused on sexual misconduct but the insurance policy obtained in discovery shows a broad exclusion for all claims "related to" or "arising from" sexual or other acts of *intentional* abuse. Such "arising from" language will broadly apply to all claims for such misconduct including even the claims against the employer directly for negligent hiring and retention. It may be possible though to amend to focus on allegations of nonsexual touching and public humiliation (which are at least arguably covered under persuasive legal authority); this may also require adding additional detail regarding legitimate but more "mundane" violations of state and federal statutes or general negligence rules concerning nursing home care because such claims should be covered despite the broad exclusion. Again, such pleading subtleties may permit the resolution of a claim that is otherwise an uninsured claim that may ultimately be bankrupted or otherwise uncollectible from the defendant or defendants.

Another area where careful pleading can be important is with dog bite cases. While it sounds delightfully alarming to allege that the plaintiff was mauled by a vicious pitbull terrier, many homeowners' insurance policies now exclude bites by certain breeds; pitbulls always make such lists, sometimes alongside Rottweilers, Akitas, and other specified breeds).[7] For this reason, it is probably best to avoid naming breeds to let the insurance company attempt to nail down its own exclusion. Similar pleading concerns arise with premises liability and motor vehicle claims (which will be covered in greater detail below).

Beyond just pleading into coverage at the outset, evaluating available coverage as early as possible is also useful for obtaining best outcomes. Consider a claim involving two similar policies written on a single business defendant where it appears that both policies apply to the subject wreck (perhaps on a *prorata* basis as opposed to one policy being truly "excess" coverage). If damages justify a demand for both limits, a detailed demand letter showing that the attorney understands the coverage subtleties may result in the tendering of policy limits in a case that could easily have been litigated for another year or more (and resolved with further compromise, such as under only one of the policies) had that early demand letter not been sent.

The above raises a parallel topic: every personal injury attorney should understand the importance of sending an effective "policy limits demand" to the liability insurers. With any claim that could exceed policy limits, that is key to setting the insurer up to ultimately pay a potential verdict against its insured "in excess" of the policy limits. That threat alone is a powerful impetus driving liability insurers to resolve a claim for policy limits; if the insurer refuses to pay, that policy limits demand is an important step in ultimately forcing the insurer to pay any excess verdict (one that exceeds the policy limits). But now we will return briefly to the question of "intent" as it pertains to insurance coverage.

MOTOR VEHICLE ACCIDENTS

Uninsured/underinsured motorists coverage (UM) is a slightly different beast from liability coverage when it comes to the rules regarding *intent*. An insured may at times obtain UM coverage for injury *caused by* an intentional act. That is because, as noted earlier, the question of whether an act is or is not intentional is determined not from the perspective of the tortfeasor, but *from the perspective of the insured*.[8] Thus an intentional act will usually be covered by insurance if the pertinent actor is *not* also the insured; that analysis applies to make UM coverage (as opposed to liability coverage) generally apply to intentional acts because the UM *insured* will not generally be said to have *intended the injurious acts of the uninsured motorist who caused the insured's injuries*. *Willard v. Kelley*[9] is a good example of this concept. Officer Willard was in hot pursuit of a suspected armed robber who crashed and then shot at Officer Willard. Officer Willard drew his weapon and knelt next to his patrol car and was shot in the arm. He ultimately sued his UM carrier for coverage. One of the defenses raised by the insurer was that the shooting could not be characterized as an "accident" for purposes of insurance coverage. Because the evidence was disputed as to whether Officer Willard expected or should have expected to have been fired upon, the question of *the insured's intention* was for the jury. That was a rather unusual case; in most instances there will be no basis to determine that *the UM insured* somehow intended their own injuries and so intent will not generally be a concern in UM coverage.

Willard is interesting for the above, but also for its illustration of at least two other useful UM rules. One rule is that a UM insured need not be occupying or using *any vehicle* for coverage to apply. If *the at-fault party* was "using" a vehicle, the UM insured has access to the insured's own UM coverage. The leading Oklahoma case on this rule adopts the Louisiana perspective: "[UM] covers the insured and the [insured's resident] family members [both called 'Class 1' insureds] while riding in uninsured vehicles, while riding in commercial vehicles, while pedestrians or while rocking on the front porch"[10] (Class 2 insureds, by contrast, are those who are UM insureds solely by virtue of occupancy of an insured vehicle). *Willard* illustrates this rule because Officer Willard was not in his squad car when he was shot but was standing next to it taking cover behind the door.

Another useful rule from *Willard* pertains to what acts on the part of another driver count towards UM coverage. Thus there is definitional leeway allowing one to argue that the UM insured's injuries were caused by an uninsured (or underinsured[11]) motorist. Indeed, the uninsured driver in *Willard* was not driving his car when he caused Willard's injuries, nor were the acts that caused Willard's injuries related to an obvious driving purpose (notably, UM coverage applies to injuries arising out of the "ownership, maintenance, or use" of an uninsured vehicle). The court noted, however: 1) the bad guy was resting his gun on the car's "windowsill," 2) he never left his vehicle, 3) the vehicle remained running during the altercation, and 4) the perpetrator drove away in the vehicle after the incident. That was sufficient to raise a jury question as to whether the shooting was related to the perpetrator's "use" of his car. Notably, *Willard* holds that a "UM-covered use" is not limited to the car's "driving operation nor to [a] lawful[] … use," (Emphasis original.) Though *Willard* is still good and useful law, later cases focus on finding a "transportation use" of the tortfeasor vehicle as a UM trigger.[12] At least one (very good) attorney applied the above rules to access his client's UM when the client hit a shredded tire on a roadway.[13]

Additionally, most UM policies define Class 2 occupant UM coverage to apply to anyone "in, on, getting in, or getting on" an insured vehicle. Relevant case law interprets that clause as meaning something like "somewhat close to the insured car." For instance, in *Wickham v. Equity Fire & Cas. Co.*,[14] a passing motorist stopped to assist a stranded driver with a flat tire. The good Samaritan helped search the trunk of the stranded vehicle for tools, putting his knees on the bumper of the car to do so, and was then later hit by an uninsured motorist *while kneeling next to the car* to tighten lug nuts. That was sufficient "occupancy" *of the stranded motorist's car* for the good Samaritan to access the stranded driver's UM. That's good lawyering and great creativity with UM.

As a result of the various cases and rules pertaining to insurance coverage for MVAs, the personal injury attorney should check for and evaluate all the following potential sources of insurance coverage:

- Liability coverage on the at-fault vehicle(s) (including coverage on the vehicle occupied by any injured passengers if his or her driver shares any blame)
- Separate liability coverage on the at-fault driver(s)

- Liability coverage on the driver's employer (if there is any way to place the driver within the course and scope of employment at the time of the MVA)
- Liability coverage on any other potentially liable party (for instance a highway maintenance company that helped to cause the occurrence of the wreck)
- The client's UM coverage
- UM coverage on the car in which the client was an occupant (to include the employer's UM coverage, if any, if the client was in a work vehicle at the time)
- UM coverage on any family members resident in the same household as the client

Before we turn to other practice areas, it will be useful to consider every attorney's need to understand malpractice insurance. For one, the typical commercial liability policy will not protect against "professional liability" – *i.e.*, malpractice coverage.

In addition to all the above, *Russell v. American States Ins. Co.*[15] suggests an unusual source for passenger UM coverage. In *Russell*, a passenger was killed in a wreck. The driver, unrelated to the deceased, was using someone else's car at the time of the wreck. The family of the deceased passenger collected liability money from the carpolicy and from the driver's policy and collected UM as a Class 1 insured (named insured or resident relative) from his dad's policy (on a different car). This injury attorney is doing a very good job thus far – and it gets better.

The owner of the car also had UM on the policy on the car and the driver (who was not the owner of the car) had UM on his own, separate policy with UM (in addition to the liability coverage). We would normally expect the policy on the car to provide UM for the passenger as a Class 2 insured (insured by virtue of "occupying" the insured car), which it did. More interesting, though, was the UM on the driver's policy. Remember, the driver did not own the involved car and so his policy was on a noninvolved auto, such that the passenger would not be a typical class 2 "occupant" insured for purposes of *that* coverage. That policy, though, defined the insured vehicle to include any car "being operated by" the insured. The deceased passenger thus became a Class 2 insured by virtue of occupancy of an "insured vehicle." Are your heads spinning yet? Again, very good lawyering produced a bountiful recovery. Roughly 50% of automobile policies contain this language.

One should also always check for stacking UM limits on policies insuring multiple vehicles (though most policies will no longer stack under an amendment to the UM statute). Also, 1) never accept anything less than the liability *limits* if you have access to any UM and 2) always comply with the UM statute's requirements for giving the UM carrier the option to "substitute" for the liability offer (and retain subrogation rights) or to instead waive subrogation and allow the insured to accept the liability money (which will require releasing the UM insurer's subrogation rights). A failure in these two areas will prevent your client from recovering *any* UM (and may "buy" the attorney a malpractice claim).

Hopefully the above has convinced you of our original thesis. Space constraints and the author's knowledge base do not permit such in-depth study of the following practice areas so we will touch only briefly on some additional examples of the intersection of insurance law with a small sampling of other practice areas.

WE MUST ALL UNDERSTAND OUR MALPRACTICE COVERAGE

Before we turn to other practice areas, it will be useful to consider every attorney's need to understand malpractice insurance. For one, the typical commercial liability policy will not protect against "professional liability" – *i.e.*, malpractice coverage. That is because such policies typically cover accidental *physical harm* (to person or property); they also expressly exclude claims of "professional" negligence. Thus, all lawyers should have malpractice insurance (though many may also need commercial liability coverage as well, if they operate a law business).

But there is more you should know about malpractice insurance than just that you need it. For instance, most insurance policies are "occurrence"-based while malpractice coverage is "claims-made" coverage. With occurrence-based coverage, a claim is covered if it accrued while the policy was in force – even if it was not reported until after the policy canceled. By contrast, claims-made coverage applies 1) if the claim accrued after the policy inception date *and 2) was reported while the policy remains active.* This can cause problems for attorneys who let their malpractice coverage lapse or change insurance companies. It is crucial in such cases to have purchased "tail" or extended reporting period (ERP) coverage.

It is additionally important for attorneys to understand their duty to report potential claims against their malpractice insurance. Indeed, one of the things we certify each year when we purchase our coverage is that we do not know about any potential malpractice concerns. A failure to report *a potential* for a claim against the coverage can give the insurer a basis to deny coverage.[16]

CRIMINAL DEFENSE AND FAMILY LAW INSURANCE CONCERNS

One potential "intersection" pertinent to the criminal defense attorney is the connection between insurance coverage and restitution. For instance, one federal statute requires the convicted person to pay restitution *to an insurer* that has paid a loss; another federal statute reduces restitution by any amount the victim has recovered in a civil proceeding (which usually means an insurance payment).[17] The state of Oklahoma has similar statutes affecting the interplay between restitution and insurance coverage.

Oklahoma also has a "slayer statute," 84 O.S. §231, that prevents a murderer from benefiting from the victim's death. This statute includes within its broad scope: taking as a beneficiary under a life insurance policy. Notably, this statute does not require a conviction.[18] While this statute won't help you defend a murderer, it might help you talk a client out of murder. More seriously, knowledge of §231 could be important to the criminal defense attorney who expects to be paid from insurance proceeds running from the decedent to the alleged killer.

What about the family law attorney? As all such practitioners discover, they will be required to advise how certain insurance proceeds may or may not be divided in a divorce decree. All such practitioners must be conversant in insurance coverages such as life, health and disability and how such coverages may be impacted by divorce. Additionally, there are QDRO orders redirecting the payment of proceeds from various assets and accounts which can have at least an indirect effect on certain insurance coverages (such as life insurance and retiree health insurance benefits). There will also be the occasion to advise the client regarding COBRA continuation coverage for health insurance benefits lost in the divorce.

Family law attorneys should also know about 15 O.S. §178, which revokes the beneficiary status of a spouse in life insurance contracts, annuities, retirement accounts, and a number of similar arrangements in the event of a divorce or annulment of the marriage (though the former marital partners have the option of renaming the ex as their beneficiary). Not all divorce attorneys know about §178 *or that it does not apply to policies governed by federal law* such as the various life insurance coverages provided to members of the armed services.[19] In one such situation, the parties disputed whether the beneficiary designation was revoked by §178 (or whether a constructive trust was imposed for the benefit of the new spouse) versus whether §178 did not affect the former beneficiary designation such that it was still the ex who was entitled to the proceeds. The insured's failure to formally designate his true choice of beneficiary after the divorce resulted in the former wife and the current wife splitting up the proceeds after paying two sets of attorneys to litigate the dispute. And now we briefly segue to estate planning.

ESTATE PLANNING AND PROBATE LAWYERS ALSO FACE INSURANCE CONCERNS

Life insurance is crucial to estate planning and probate. It is thus important for such attorneys to be conversant in products such as Irrevocable Life Insurance Trusts (ILITs) for removing proceeds from the taxable estate and for avoiding probate by passing proceeds directly to named beneficiaries. Mistakes with such products can trigger unintended taxes, disputes or delay in probate, none of which benefit the practitioner's business model.

BUSINESS LAW AND RELATED INSURANCE COVERAGE

Similarly, the business law attorney may be called upon to assist the client with evaluating and/or accessing a variety of insurance coverages. For instance, your clients need to understand that their own faulty work is not ordinarily insurable[20] (that is more the purpose of performance and maintenance bonds). The exception is where the faulty work causes damage to *other* property or causes physical injury to a person.[21] So if your contractor client is sued for installing a bad roof, the contractor's liability insurer will not defend that claim or pay a settlement or judgment unless as a result of the faulty work some other damages are alleged such as water damage inside the home or the roof collapsing and injuring the family dog. Many business owners are surprised at this result because they thought they were buying coverage to bail them out if they happen to be sued for alleged faulty workmanship. We do not want their lawyer to also be surprised.

It is also important that such clients understand "completed operations" coverage which extends coverage to otherwise covered damage occurring after the project's completion (again, this does not refer to repair of the faulty work but only to payment for additional damage resulting from the defective work).[22] If completed operations are excluded from the coverage, *then only claims arising while the contractor is still performing the work will be covered*. Obviously, that timeframe covers only a small portion of the contractor's risk.

Business law practitioners (all practitioners, really) should also be aware of the possibility of suing the insurance agent for failing to procure coverage as requested or even suing the insurer for reformation if the agent has misled the insured into thinking that business risks (or some other risks) were covered by the policy. Additionally, such practitioners should be conversant in topics such as certificates of insurance, additional insured status, indemnification and risk transfer through insurance products, as all these insurance concepts, and many more will affect your business clients.

EMPLOYMENT LAWYERS AS INSURANCE LAWYERS

Workers' compensation coverage is mandatory in Oklahoma for most employers.[23] The employment lawyer is aware of that requirement and so advises the client. Likewise, ERISA governs many employer-sponsored programs for life, health, and disability insurance coverages. As every employment lawyer well knows, ERISA law is a complex specialty area. ERISA occasionally also affects other practice areas (it often comes up in the context of a subrogation claim in a personal injury matter) so it can be useful to at least know an ERISA specialist with whom to confer. This is but a small fraction covered by this particular "intersection," but again, space and knowledge constraints dictate that we move on.

REAL ESTATE ALSO RELIES HEAVILY UPON INSURANCE LAW

The real estate lawyer must be familiar with the intricacies of title insurance to protect against unknown defects, liens and encumbrances as well as with the basics of property insurance, builders' risk, and rental interruption coverages. They must also be aware of how such coverage interacts with closing documents, leases and other contracts, and land development projects.[24] We could devote an entire article to this practice area as well, but must keep moving.

TAX LAW TOO

Some insurance proceeds that replace income (such as business interruption coverage) may be taxable while most insurance proceeds that make the insured whole for an actual loss are not taxable. This second category includes life insurance benefits, property damage coverage, and even personal injury damages (even the income replacement component of an insurance payment for personal injury is typically nontaxable[25]) so hopefully we will see all of you tax lawyers at our next insurance law seminar as well.

LET'S NOT FORGET OUR OIL AND GAS LAWYERS

Insurance coverage problems are always at the forefront of oil and gas injury disputes. Indeed, as seen in the case law, the insurance carriers writing coverage for oil operations seem to have mastered the art of writing coverage (for oilfield personal injury or pollution damage, for instance) that just barely exceeds the minimum for avoiding the label "illusory coverage."[26] Attorneys advising energy clients on insurance coverages should scrutinize such policies carefully to make sure they sufficiently cover the risks inherent in such operations. Concomitantly, everything said about business law and real estate law will apply in the oil and gas context as well. So, oil and gas lawyers, we welcome you to our CLEs as well.

CONCLUSION

As noted, the foregoing survey is not exhaustive but hopefully proves that every lawyer needs a basic understanding of the way insurance coverage and insurance law impacts every law practice. That being so, each year's insurance issue of the bar journal – and the next insurance law CLE – are well worth the time of every Oklahoma attorney.

ABOUT THE AUTHOR

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ENDNOTES

1. *E.g., Sullivan v. Equity Fire & Cas. Co.,* 1995 OK CIV APP 2, 889 P.2d 1285; *Equity Ins. Co. v. Garrett,* 2008 OK CIV APP 23, ¶16, 178 P.3d 201, 205.

2. *Dayton Hudson Corp. v. Am. Mut. Liab. Ins. Co.*, 1980 OK 193, 621 P.2d 1155, impliedly recognizes this distinction but holds that punitive damages are not insurable by the actor, even when the actor is only grossly negligent (but a principal's *respondeat superior* liability for punitive damages is insurable if the principal did not know of a bad "propensity").

3. *See e.g., Morgan v. State Farm Mut. Auto. Ins. Co.,* 2021 OK 27, 488 P.3d 743.

4. *Kan. City Life Ins. Co. v. Nipper,* 1935 OK 1127, 51 P.2d 741.

5. *Shelter Mut. Ins. Co. v. Wheat*, 313 F. App'x 76, 82 (10th Cir. 2008) (gunshot injury caused by firing gun with intent to scare is not covered "accident" under shooter's homeowners policy because such injury is natural and foreseeable consequence of firing the gun); *but see Penley v. Gulf Ins. Co.,* 1966 OK 84, 414 P.2d 305 (damage caused by employee's intentional but mistaken act of putting regular gasoline in a diesel vehicle was still considered an "accident" for insurance coverage purposes – *Penley* is still good law).

6. *See United States Fid. & Guar. Co. v. Briscoe*, 1951 OK 386, 239 P.2d 754.

7. Some homeowners' policies exclude all dog bite liability or attacks by known vicious dogs.

8. *Briscoe*, 1951 OK 386, ¶7, 239 P.2d 754, 756 ("Whether an injury is accidental is to be determined from the standpoint of the person injured. If the injury comes to him through external force, not of his choice or provocation, then, as to him, the injury is accidental.").

9. 1990 OK 127, 803 P.2d 1124.

10. *Cothren v. Emcasco Ins. Co.*, 1976 OK 137, ¶10, 555 P.2d 1037, 1039.

11. Oklahoma's uninsured motorists' statute, 36 O.S. §3636(C), defines an uninsured vehicle to also include an underinsured vehicle.

12. Cases are all over the map as to what is or is not a transportation use. Murrah bombing – no (*Mayer v. State Farm Ins. Co.*, 1997 OK 67, 944 P.2d 288); Burned in trunk – no (*Safeco v Sanders*, 1990 OK 129, 803 P.2d 688); Drive-by-shooting – maybe – if can show shooter exercised "control" of vehicle (*Byus v. Mid-Century Ins. Co.*, 1996 OK 25, 912 P.2d 845); Drive-by-shooting can also be covered by hit and run coverage (*Hulsey v. Mid-America Preferred*, 1989 OK 107, 777 P.2d 932).

13. Per *Ply v. National Union Fire Ins. Co.*, 2003 OK 97, 81 P.3d 643, bad maintenance need not be contemporaneous with the wreck.

14. 1994 OK CIV APP 148, ¶6, 889 P.2d 1258, 1260.

15. 813 F.2d 306 (10th Cir. 1987).

16. Though not an "insurance" concern, it may also be a good idea, though counteractive, to notify the client of their potential to make a claim so as to start the running of the limitations clock.

17. *See e.g., United States v. Whittley*, No. CR-19-78-G, 2021 U.S. Dist. LEXIS 234914, at *3, 2021 WL 5830029 (W.D. Okla. Dec. 8, 2021).

18. *State Mut. Life Assurance Co. of Am. v. Hampton,* 1985 OK 19, ¶21, 696 P.2d 1027, 1032.

19. *E.g., Iron Workers Mid-South Pension Fund v. Stoll,* 771 F. Supp. 781, 786 (E.D. La. 1991) (Section 178 is preempted by ERISA); *Maretta v. Hillman,* 722 S.E.2d 32 (Va. 2012) (recognizing federal life insurance not subject to state statutes terminating beneficiary status upon divorce).

20. *See e.g., Dodson v. St. Paul Ins. Co.,* 1991 OK 24, 812 P.2d 372.

21. *Id.* at ¶16, 378.

22. *Orthopedic Res., Inc. v. Nautilus Ins. Co.*, 654 F. Supp. 2d 1307, 1312 (N.D. Okla. 2009).

23. 85A O.S. §3.

24. *See e.g., First Fed. Sav. & Loan Ass'n v. Transamerica Title Ins. Co.,* 19 F.3d 528 (10th Cir. 1994) ("Title insurance does not insure the value of the subject property; it insures only that the title to such property is unencumbered by unknown liens, easements, and the like which might affect the property's value.").

25. *See e.g., Atwood v. Union P. R. Co.*, No. 90-4076, 1991 U.S. App. LEXIS 11123, at *10 (10th Cir. May 20, 1991).

26. *See e.g., Crown Energy Co. v. Mid-Continent Cas. Co.*, 2022 OK 60, 511 P.3d 1064.

Tax Stamp as Drug Law in Action

By Kat Albrecht, Corey Boyd, Samuel Galoob and Stephen Galoob

PROSECUTORIAL CHARGING "IS WHERE AMERICAN CRIMINAL LAW BECOMES operative."[1] This article examines prosecutorial charging by focusing on a specific offense in Oklahoma – Possession of a Controlled Substance Without a Tax Stamp (colloquially called Tax Stamp and codified 68 Okla. Stat. §450.8).

TAX STAMP

In November 2016, Oklahoma voters approved State Question 780, which made the offense of "Possession of Controlled Dangerous Substance" (simple possession) a misdemeanor but did not change any other drug laws or penalties. Oklahoma prosecutors vigorously opposed SQ 780 in the runup to the 2016 election, arguing that it would deprive them of crucial tools that they needed to promote public safety.[2] Some prosecutors also seemed to resist SQ 780 after it went into effect. One study found that the number of "Possession of a Controlled Substance With Intent to Distribute" (PWID) charges across Oklahoma rose almost 15% in the year after SQ 780 went into effect.[3] That study found evidence consistent with the hypothesis that Oklahoma prosecutors substituted felonies such as PWID for conduct that, prior to the enactment of SQ 780, would have previously been charged as simple possession.[4]

Tax stamp is another drug offense that could be substituted for the charge of simple possession. Adopted in 1990, §450.8 forbids any "dealer" from manufacturing, distributing, producing, shipping, transporting, importing, or possessing a controlled dangerous substance without affixing the appropriate tax stamp. The term "dealer" is defined as "a person who in violation of the Uniform Controlled Dangerous Substance Act… in any manner possesses more than 42 ½ grams of marihuana, or seven or more grams of any controlled dangerous substance other than marihuana, or ten or more dosage units of any controlled dangerous substance other than marihuana which is not sold by weight."[5] Tax stamp charges can be brought alongside other drug crimes without violating 21 Okla. Stat. §11, the statutory prohibition on multiple punishment.[6] Prior to 2026, tax stamp was punishable by up to five years' imprisonment on a first offense.[7]

PATTERNS OF CHANGE IN TAX STAMP PROSECUTIONS

There has been a significant increase in tax stamp prosecutions since the passage of SQ 780. The following table summarizes the total number of tax stamp cases filed annually between 2015-2025.

TABLE 1: TOTAL NUMBER OF TAX STAMP CASES IN OKLAHOMA, 2015-2025

2015	113
2016	117
2017	261
2018	316
2019	215
2020	193
2021	255
2022	212
2023	245
2024	230
2025	156

In the six years after the effective date of SQ 780, the average number of tax stamp charges filed annually was 239.5 statewide – a 208% annual increase compared to the two-year period immediately prior.

Unlike the increase in PWID charges (which was realized in a majority of Oklahoma's counties), the proliferation of tax stamp charges was concentrated in a few high-filing counties. During the 2015-2026 period, only 54 Oklahoma counties had even a single tax stamp charge filed, and 14 of these counties had only one or two tax stamp charges filed. However, during this period approximately 75% of all tax stamp charges were concentrated in seven high-filing counties: Cleveland, Craig, Garvin, Mayes, Rogers, Texas, and Tulsa.

Here is a breakdown of the total number of tax stamp charges filed in these seven counties during the 2015-2025 period.

TABLE 2: TOTAL TAX STAMP CASES BY COUNTY, 2015-2025

Cleveland	110
Craig	331
Garvin	144
Mayes	109
Rogers	142
Texas	270
Tulsa	618

These high-filing counties are not uniform in their population or any other significant characteristics. Tulsa County (698,782 estimated population in 2025) and Cleveland County (303,973) have the second- and third-largest populations of any Oklahoma counties, and Rogers County has the sixth-highest estimated population at 102,197.[8] However, the remainder of these high-filing counties have estimated populations between 14,000 and 39,500, ranking between 27th and 48th among the 77 Oklahoma counties.[9] By contrast, the largest county in the state, Oklahoma County, had only one tax stamp charge during the period between 2015-2025. For each of these seven high-filing counties, the rate of tax stamp charges filed dramatically increased after the passage of SQ 780 in November 2016 and the effective date of the law in June 2017.

THE TAX STAMP EXPLOSION: TWO HYPOTHESES

What explains this proliferation of tax stamp charges? One possible hypothesis is that the increase in tax stamp charges was a response to an increased number of tax stamp offenses. However, this public safety hypothesis is not credible. First, any case that could be charged as the felony of tax stamp could instead be charged as simple possession (a misdemeanor), and most such cases could also be charged as PWID (a felony). Second, if filing tax stamp charges were a good way to protect public safety, then we would expect that law enforcement officials would have filed such charges prior to the passage of State Question 780. Moreover, as noted below, an audit study of tax stamp charges in one high-filing county indicates that few people convicted of a tax stamp charge serve any period of incarceration on that charge.

Another possible explanation is the **substitution hypothesis**: perhaps prosecutors filed felony tax stamp charges in cases where they might have filed charges for the felony of simple possession prior to 2017, but were precluded from doing so by SQ 780. On this substitution hypothesis, filing tax stamp charges would provide a backdoor way of felonizing simple possession, one that allows prosecutors to exercise "compassionate leverage"[10] by charging low-level drug offenders with felonies. If the substitution hypothesis is correct, then one would expect to see many cases in which the tax stamp charge was the most serious charge filed.

The **revenue generation** hypothesis provides another possible explanation for the pattern of tax stamp charges. On this hypothesis, tax stamp charges are primarily mechanisms for generating revenue from legal-financial obligations associated with filing and conviction. If this hypothesis were true, then we would expect tax stamp charges to be filed in cases where more serious drug charges were filed – for example, PWID, trafficking in drugs, or manufacturing, each of which carries a higher penalty on a first offense than does tax stamp. Defendants charged with tax stamp violations would routinely be convicted of these charges in plea deals but rarely serve any distinctive sentence for the tax stamp charge. Rather, any sentence for tax stamp offense would be served concurrently to the more-serious drug charge and expire before the culmination of the sentence for that more-serious charge. Moreover, if the goal of filing tax stamp charges is to generate revenue, then we would expect that the legal-financial obligations associated with tax stamp charges would rarely be waived or reduced.

Another possible explanation is the substitution hypothesis: perhaps prosecutors filed felony tax stamp charges in cases where they might have filed charges for the felony of simple possession prior to 2017, but were precluded from doing so by SQ 780.

AN AUDIT STUDY OF CRAIG COUNTY

To test these hypotheses about why Oklahoma prosecutors file tax stamp charges, we focused our attention on Craig County. Craig County has an estimated population of 14,115 people in 2020, which makes it the 48th largest county in Oklahoma.[11] Interstate 44 runs through the southern part of the county. Yet Craig County saw 328 tax stamp filings during the period between 2015-2025, the second-highest number of such filings of any county. Moreover, of the 159 total drug felony cases in 2021, 55 (or more than one-third) involved a charge of tax stamp.

For each Craig County case involving a tax stamp charge between 2017 and 2021,[12] we utilized data from the Oklahoma Supreme Court Network to identify whether there were other drug charges and, if so, which ones, and whether the defendant served time on the tax stamp charge(s). We also noted whether any sentence served on tax stamp charges was distinctive or whether it was duplicative (for example, a sentence served concurrently to another/longer drug sentence, a deferred sentence, or a suspended sentence). This information would help assess whether tax stamp charging patterns are consistent with the substitution hypothesis or the revenue generation hypothesis.

Based on our analysis, the patterns of charging and conviction in Craig County are more consistent with the revenue generation hypothesis than the substitution hypothesis. Of the 139 Craig County cases between 2017 and 2021 for which we obtained court records, 136 of them involved a more serious drug charge such as PWID or trafficking. These results suggest that tax stamp charges were a tag-along to more serious felony drug charges, rather than a substitution for misdemeanor charges of simple possession.

Our study also provided data about the resolution of tax stamp cases in Craig County. Of the 138 Craig County cases between 2017-2021 that involve a tax stamp charge, 27 have been dismissed, 17 involve a sentence or term that is consecutive to another sentence, and 84 involved a sentence to be served concurrently to the sentence for a more-serious drug charge. For this latter category of cases, the defendant convicted of the tax stamp offense will not serve any distinctive time for that offense. In only 14 cases was a defendant convicted of tax stamp charges and sentenced to any distinctive time for that charge. Eleven of these 14 cases involved a sentence that was either deferred (under which a defendant is released from custody and given the chance to complete probation before a certain date) or suspended (which the defendant is allowed to serve outside of the prison system). In other words, of the 138 tax stamp charges, only three resulted in the defendant serving a specific sentence of incarceration for the charge.[13]

These results are more consistent with the revenue generation hypothesis than the substitution hypothesis. In Craig County, tax stamp convictions rarely result in any distinctive incarceration. However, each of these convictions resulted in approximately $400 in court costs, and the most common fine associated with tax stamp convictions was $500. In addition, those convicted of tax stamp charges are required to pay a supervision fee to the district attorney if they are released on probation. Based on these figures, we estimate that tax stamp charges in Craig County resulted in well over $2 million in assessments of legal-financial obligations to defendants since 2017. Moreover, while more-serious drug charges were routinely reduced through the plea-bargaining process (for example, from aggravated trafficking to trafficking, or from trafficking to PWID), we found only seven cases from Craig County during the relevant period in which the tax stamp charges was specifically resolved through plea bargaining.

By way of comparison, consider the tax stamp filings in Cimarron County and Beaver County. Cimarron County, in far western Oklahoma, is the smallest county in Oklahoma, with an estimated population of 2,059 in 2025. Nearby Beaver County had an estimated population of 4,882 in 2025.[14]

In Cimarron and Beaver Counties, tax stamp charges are filed much less frequently than in Craig County: 49 in Cimarron between 2015-2025 (43 of which were charged after the passage of SQ 780 in 2016) and 23 in Beaver. Moreover, there's a different pattern to resolving tax stamp cases in these counties than in Craig County. In both Beaver County and Cimarron County, tax stamp charges were much more likely to be dismissed through plea bargaining and also more likely to result in distinctive sentences of incarceration.[15] These results suggest that courts in Beaver County and Cimarron County were much more likely to both dismiss tax stamp charges and to sentence defendants convicted of tax stamp charges than courts in Craig County.

In sum, the results from Craig County are consistent with the revenue generation hypothesis. Craig County prosecutors filed tax stamp charges often, especially in light of the low population levels and low number of felony charges in the county. Tax stamp charges rarely resulted in distinctive sentences of incarceration for defendants. Yet Craig County courts also dismissed tax stamp charges far less frequently than courts in comparable jurisdictions. These results suggest that the point of filing and convicting on tax stamp charges was to generate revenue, rather than to promote public safety.

CONCLUSION

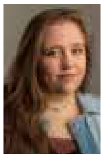
Although tax stamp charges have significantly increased, the offense is not one of the most frequently charged offenses in Oklahoma's criminal system. That said, the pattern of tax stamp prosecutions illustrates at least two broader critiques of Oklahoma criminal law in action.

First, the proliferation of tax stamp prosecutions since 2017 is an example of prosecutorial discretion. The lack of incarceration associated with tax stamp prosecutions indicates that the rationale for these charges is likely not public safety. Rather, the proliferation in tax stamp charges since 2017 is more plausibly a feature of the broader financial incentives of district attorneys to generate revenue from charging offenses. This incentive is specifically enabled for the charge of tax stamp, to which the Court of Criminal Appeals has been unwilling to apply Oklahoma's statutory prohibition on charge stacking.[16] Tax stamp cases therefore illustrate the pattern of "profit-driven prosecution"[17] that is often critiqued but difficult to identify or dislodge.

Second, the geographic concentration of tax stamp cases raises broader questions about prosecutorial accountability for charging decisions. Prosecutors are "the most powerful actors in the criminal justice system,"[18] and prosecutorial charging decisions reflect the apotheosis of that power. Yet there are no uniform standards for how cases should be charged across (and often within) jurisdictions. It is difficult to imagine that county-level disparities like those evinced in tax stamp prosecutions would be tolerated for other kinds of discretionary decisions by public officials.

Authors Note: The authors are grateful to Ryan Gentzler and the team at Open Justice Oklahoma for conducting the initial research on tax stamp charges in 2022. This research is an outgrowth of Samuel Galoob's midyear project at Booker T. Washington High School.

ABOUT THE AUTHORS



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ENDNOTES

1. Shima Baradaran Baughman, Alan Cicotte, and Kristina Bishop, "The Police-Prosecutor Charging Decision," *Iowa Law Review* (forthcoming 2026).
2. Stephen R. Galoob, Colleen McCarty & Ryan Gentzler, "Oklahoma's State Question 780: Criminal Justice Reform and Resistance," 31 *Fed. Sent. Rptr.* 182 (2019).
3. *Id.* at 183-4.
4. *Id.* at 184-5.
5. 68 Okla. Stat. §450.1(2). These minimum quantities are significantly lower than the quantities specified in Oklahoma's Trafficking statute, 63 Okla. Stat. §2-415.
6. *See*, *e.g.*, Brian Boeheim, David Dossman, and Stephen Galoob, *Oklahoma Criminal Law and Procedure With Forms* (2025 ed.), at §5.03 (citing *White v. State*, 1995 OK CR 15, 900 P.2d 982 (Okla. Crim. App. 1995)). The sole exception is that tax stamp charges cannot be charged alongside simple possession, since simple possession charges do not contain any elements that are not also elements of tax stamp charges. *Id.*

7. Under the Sentencing Modernization Act effective Jan. 1, 2026, tax stamp is a D1 felony punishable by up to five years imprisonment on a first offense with a requirement to serve at least 20% of a sentence before release from custody. 21 O.S. §20N (2026)

8. United States Census Bureau, "County Population Totals and Components of Change: 2020 2025," https://bit.ly/4fgBB4K.

9. *Id.*

10. Galoob, Gentzler, and McCarty, *supra* n. 2, at 182.

11. United States Census Bureau, "County Population Totals and Components of Change: 2020 2025," *supra* n. 8.

12. We cut off our study at this date to minimize the number of active cases under analysis.

13. Two of these three cases involved a jury trial. Under Oklahoma law, juries decide not only whether a defendant is guilty but also what the sentence for any offense is.

14. United States Census Bureau, County Population Totals and Components of Change: 2020 2025, *supra* n. 8.

15. For example, of 19 cases in Beaver County between 2017-2021 involving a tax stamp charge, the tax stamp charge was dismissed through plea bargaining in nine cases and the defendant was sentenced to distinctive incarceration for the tax stamp charge in four cases. Likewise, of the 26 cases in Cimarron County between 2017-2021 involving a tax stamp charge, the tax stamp charge was dismissed through plea bargaining in 17 cases and the defendant was sentenced to distinctive incarceration for the tax stamp charge in two cases.

16. See Boeheim, Dossman, and Galoob, supra n. 6, at §5.03 (summarizing cases).

17. Maybell Romero, "Profit-Driven Prosecution and the Competitive Bidding Process," 107 *J. Crim. L. & Criminology* 161, 168 (2017) (identifying structural drivers that impose "greater pressure and incentives for prosecutors not only to save costs but also to generate revenue.")

18. John Pfaff, *Locked In: The True Causes of Mass Incarceration – and How to Achieve Real Reform*, 133 (2017).

LEGAL POTPOURRI

Reservation Realities

Oklahoma Taxation of Tribal Members Post-*McGirt* Under *Stroble* and New Challenges to Tribal Sovereignty Including Hunting and Fishing Regulation

By Jeff D. Trevillion Jr. and Mike McBride III

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THE 2025 CASE OF *STROBLE V. OKLAHOMA TAX COMMISSION*[1] presents a textbook example of what happens when state tax authority collides with federal Indian law. The legal stakes here are high, and the boundaries are contested when the state makes challenges to federal Indian law.

In *Stroble*, the Oklahoma Supreme Court decided that Oklahoma may tax the income of Alicia Stroble, an enrolled citizen of the Muscogee (Creek) Nation who both lives and works for her tribe within the boundaries of the Creek Reservation. With *McGirt v. Oklahoma*[2] reaffirming the reservation's existence and boundaries, Ms. Stroble contended that taxing her income violated long-standing and controlling federal precedents. This article explains the facts, legal arguments, and broader implications of the *Stroble* case, positioning it within the shifting terrain of tribal sovereignty and state power post-*McGirt*.

BACKGROUND AND PROCEDURAL HISTORY

Ms. Stroble, the taxpayer at the center of the tax controversy, is a Muscogee (Creek) Nation citizen. She works for the nation on trust land and earns her income entirely within "Indian country." Ms. Stroble lives on land in Okmulgee County situated well within the boundaries of the Creek Reservation recognized in *McGirt*, thus she claimed her income should remain outside the state's reach.[3] Whether *McGirt* applies to civil and regulatory matters and not just criminal matters was the issue in dispute.

The Oklahoma Administrative Code provides for a tribal income tax exemption for an enrolled member of a federally recognized tribe when the member is 1) "living within 'Indian Country' under the jurisdiction of the tribe to which the member belongs," and 2) "the income is earned from sources within 'Indian Country' under the jurisdiction of the tribe to which the member belongs."[4] After Ms. Stroble claimed the tribal income exemption on her 2017–19 tax returns, the Oklahoma Tax Commission (OTC) denied the exemption. Both sides stipulated that Ms. Stroble is a tribal citizen and that she earned all of her income from sources within Indian country. The OTC, however, claimed Ms. Stroble did not satisfy the requirement of living on "Indian land." Ms. Stroble filed a tax protest challenging the OTC's denial of her claimed exemption.

An OTC administrative law judge (ALJ) initially ruled in Ms. Stroble's favor,[5] but the commissioners reversed the ALJ's findings, conclusions and recommendations.[6] On July 1, 2025, the Oklahoma Supreme Court affirmed the commission's decision, prompting Ms. Stroble to petition the U.S. Supreme Court for certiorari review.[7] On April 6, 2026, the U.S. Supreme Court denied Ms. Stroble's petition for *certiorari* without comment.

LEGAL FRAMEWORK

Federal Indian law has long enforced a "neutral zone" between state and tribal authority, particularly when it comes to taxation. The seminal case, *McClanahan v. Arizona State Tax Commission*,[8] established the categorical rule that states cannot tax the income of tribal citizens who live and work in Indian country unless Congress clearly authorizes it. And in 1993, the U.S. Supreme Court adhered to this "*per se*" tax rule, sanctioning the OTC in *Oklahoma Tax Commission v. Sac and Fox Nation*.[9]

In *McGirt* the U.S. Supreme Court reiterated that the Muscogee (Creek) Reservation was never disestablished. This was a win for tribal sovereignty, when the U.S. Supreme Court clearly reaffirmed the reservation's boundaries: the entire Creek Reservation is "Indian country" under federal law. And after *McGirt*, under the established law of *McClanahan*, one would have thought that the state clearly could not tax the income of tribal citizens like Ms. Stroble, who live and work in the Creek Reservation. But the OTC responded that *McGirt* only applied to *criminal* law.

The Oklahoma Administrative Code requires tribal members to both live and work in "Indian country" to qualify for the tax exemption.[10] Here, the OTC asserted Ms. Stroble's residence was inside the reservation for criminal law purposes, but on private fee land, and thus not in "Indian country" for purposes of the tribal income tax exemption. Ms. Stroble maintained that interpretation misreads the rules. Federal law, particularly 18 U.S.C. §1151(a), defines "Indian country" to include all land within "reservation" boundaries, regardless of ownership type.

ARGUMENTS AND REASONING

Ms. Stroble's argument was straightforward: she lives and works within the reservation. She relied on *McGirt* and federal tax immunity precedent to argue the OTC's residency requirement is too narrow and conflicts with controlling federal law.

The OTC insisted that the relevant information for state income tax exemption purposes is the title ownership status of her residence: Whether her residence is in a tribal land trust or in private fee ownership determines if it is "Indian country." Ms. Stroble contended that OTC interpretation was a misapplication of both federal precedent and 18 U.S.C. §1151, the federal criminal statute the OTC relied on when it promulgated its definition of "Indian country."[11] In her view, nothing in the exemption was reliant on the type of land ownership.

The ALJ agreed with Ms. Stroble. He found that Ms. Stroble earned her income entirely in Indian country, and that her residence, though on fee land, was within the reservation. The OTC, however, disagreed. Ms. Stroble appealed in 2022.

After deliberating for nearly three years, the Oklahoma Supreme Court effectively limited the scope of *McGirt*, ruling that its holding did not extend to civil matters like taxation.[12] The court, in a short 6-3 per curiam ruling, affirmed the OTC order denying Ms. Stroble's exemption. The deeply divided justices also issued five separately written concurring opinions and one dissenting opinion. The slip opinions together ran 120 pages.

The per curium order effectively sent the ball to the U.S. Supreme Court as the Oklahoma Supreme Court majority was not ready to make a sweeping civil decision:

> The United States Supreme Court's declaration – 113 years after statehood – that nearly half of Oklahoma is a reservation is unprecedented. To date, the United States Supreme Court has not extended its ruling in *McGirt* beyond the Major Crimes Act. To date, the United States Supreme Court has not extended its ruling in *McGirt* to the State's civil or taxing jurisdiction. And it is not this Court's place to do so.[13]

Chief Justice Rowe concurred with the majority, stating that the court should not expand *McGirt*'s holding to civil regulatory law, including taxation. He acknowledged that the OTC had incorporated the Major Crimes Act's definition of "Indian country" into its regulation and emphasized that the OTC has the authority to promulgate rules that have the force of law unless amended or revised. But he suggested that Ms. Stroble's appeal sought to apply *McGirt* retroactively, to tax returns from 2017-2019, which he said could not be done.[14]

Vice-Chief Justice Kuehn concurred specially, acknowledging the *McGirt* ruling regarding reservation status but stating that it does not resolve the issue of whether the state can impose income taxes on a tribal citizen living and working on the tribe's reservation. She also suggested that the court should not apply *McGirt* to civil tax issues, as federal Indian law regarding civil taxation is less clear-cut than criminal jurisdiction.[15]

Justice Winchester concurred, discussing the practical implications of extending *McGirt* to civil matters, including the potential impact on state taxation and governance. Additionally, he highlighted the potential economic consequences of divesting the state of its taxing authority over fee land, which he said could undermine the state economy and its ability to fund essential services.[16]

Justice Darby concurred specially, arguing that the remaining Creek Reservation is not "Indian country" for tax purposes because it is not set aside for use by Native Americans under federal superintendence.[17]

Justice Kane, joined by Justice Jett, concurred specially, asserting that federal law does not preempt Oklahoma's authority to tax Ms. Stroble's income and that no Oklahoma statute or regulation exempts her from paying income tax.[18] This concurrence also declares O.A.C. §710:50-15-2(b) void.[19] He further argued that the OTC did not adopt the Major Crimes Act's definition of "Indian country" in its regulation and that the commission's definition does not include private fee land.[20]

Justice Combs, joined by Justices Edmondson and Gurich, dissented, arguing that long-standing U.S. Supreme Court precedents defining "Indian country" for purposes of state taxation require victory for Ms. Stroble in her income tax protest. The dissent contended that the OTC's rule adopted the Major Crimes Act's definition of "Indian country," and that *McGirt's* recognition of the Creek Reservation should apply to civil tax matters.[21]

THE PATH TO THE U.S. SUPREME COURT

The Oklahoma Supreme Court opinion appeared to contravene a long line of U.S. Supreme Court decisions regarding the Major Crimes Act's definition of "Indian country" and its applicability to civil jurisdiction, in addition to the U.S. Supreme court cases limiting the power of states to tax tribes and their citizens. Thus, Ms. Stroble filed a petition for a *Writ of Certiorari*, citing the following reasons for granting the petition: 1) the Oklahoma Supreme Court "Flouts This [U.S. Supreme Court] Court's Precedents;" 2) the Oklahoma Supreme Court's decision "Creates a Conflict of Authority;" (3) the question presented ("Whether Oklahoma may tax the income of a Muscogee (Creek) Nation citizen who lives and works within the Muscogee (Creek) Reservation that *McGirt v. Oklahoma*, 591 U.S. 894 (2020), held remains Indian country."); and 4) the Stroble case is an "Ideal Vehicle" to resolve the question presented.[22]

Many tribal governments, as well as the National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, Native American Finance Officers Association, and the National Intertribal Tax Alliance, filed *amici curiae* briefs supporting Ms. Stroble, with arguments ranging from "Tribal nations are sovereign governments responsible for building thriving economies and communities"[23] to the Oklahoma decision "Flouts This Court's Categorical Tax-Preemption Rule."[24]

The U.S. Supreme Court relisted her case for conference review nine times, but on April 6, 2026, it ultimately denied certiorari without comment.

BROADER LEGAL AND POLICY IMPLICATIONS

The *Stroble* case was a blockbuster moment for federal Indian tax and civil regulatory law, positioned for the national stage. By narrowing *McGirt*'s scope to criminal law only, Oklahoma ultimately sought to move the goalpost again on tribal sovereignty. *Stroble* contended it was a move that risked undermining decades of *per se* tax law precedent.

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This case not only highlighted the conflict between state-level administrative rules and federal Indian law, but it also raised fundamental questions about how state sovereignty can or cannot operate within the boundaries of Indian reservations affirmed by federal courts. When state agencies disregard federal precedent, it sets up a jurisdictional tug-of-war that places individual tribal citizens like Ms. Stroble in an unstable legal limbo and threatens larger tribal sovereignty interests.

The U.S. Supreme Court, the 10th Circuit and several other circuits interpret 18 U.S.C. §1151 as defining Indian country for both criminal and civil purposes.[25] The Oklahoma Supreme Court, declining to follow this approach, created jurisdictional concerns and signaled the need for federal review. The rule of law requires consistency across jurisdictions, and a failure to resolve the jurisdictional split allows similar cases to proliferate, undermining both tribal sovereignty and uniform application of federal law.

Finally, the practical implications are significant. If states like Oklahoma can tax tribal citizens in Indian country, it erodes tribal governments' ability to raise revenue and fund services. Conversely, existing state income tax revenue would certainly diminish if the Oklahoma Supreme Court ruled otherwise.

Tribal and state interests closely watched and highly anticipated this ruling. Collectively, those interests were huge: If *McGirt* extended to all of the "Five Tribes" reservations in eastern Oklahoma, the OTC estimated that the state's loss in income tax revenue would exceed $72 million per year and that potential individual taxpayer refund claims for the disputed three tax years could total $218 million. But the issue of tribal sovereignty jurisdiction, including whether and to what extent tribes have civil regulatory and tax powers over fee lands within their reservations, was arguably even larger.

Ultimately, the Oklahoma justices found very little common ground to agree upon. The U.S. Supreme Court had a chance to resolve the issue once and for all. After over three months of internal conference debate, however, it ultimately denied *certiorari* review of the Oklahoma Supreme Court's decision in *Stroble* without comment, apparently not wanting to utilize *Stroble* as a vehicle to resolve these lingering civil jurisdiction disputes.

While *McGirt* arose in the criminal context, its affirmation of the continued existence of reservations has triggered significant questions about civil and regulatory jurisdiction, including taxation and also hunting and fishing enforcement.

McGIRT AND ITS CONTINUING IMPLICATIONS

While *McGirt* arose in the criminal context, its affirmation of the continued existence of reservations has triggered significant questions about civil and regulatory jurisdiction, including taxation and also hunting and fishing enforcement. In *McGirt*, the U.S. Supreme Court largely set aside considerations such as practical governance concerns, funding challenges, or administrative inconvenience, focusing instead on the plain treaty and statutory text recognizing reservation boundaries. Only Congress can extinguish or disestablish reservations.

However, the Oklahoma Supreme Court's decision in *Stroble* illustrates that, in the civil, tax and regulatory contexts, these practical and equitable considerations remain very much in play. As courts grapple with the post-*McGirt* legal landscape, state and tribal governments can expect continued litigation over:

- *State Taxation Authority in Indian Country.* Tribes may assert that certain state taxes are preempted by federal law or unlawfully infringe on tribal self-government. State and local governments will likely maintain that only incidence of taxation on trust or allotments lands will qualify for state tax exemptions –commerce occurring on, or income earned on, fee lands within Indian reservations would be subject to state tax.

- *Jurisdictional Uncertainty and Economic Impacts.* Businesses, including tribally owned enterprises, face uncertainty about tax obligations and potential liabilities. Local governments and tribes will have to work through allocating resources to pay for, provide and administer traditional municipal services such as police, fire, sewer, water, sanitation, animal control, code and building inspections and the like.[26]
- *Retroactive Claims and Refunds.* The state may confront claims for significant tax refunds for transactions previously taxed in areas now confirmed as Indian country under *McGirt*. But with the denial of certiorari review, tax refunds will be limited geographically to tribal citizens that live on trust or allotted lands, not fee lands within a reservation.

RECENT DEVELOPMENTS: HUNTING AND FISHING REGULATION

While *Stroble* certiorari briefing before the U.S. Supreme Court was in progress during the fall of 2025, Gov. Stitt sought to enforce hunting regulations on Native American citizens within Choctaw reservation lands in eastern Oklahoma. Gov. Stitt relied upon the *Stroble* and *City of Tulsa v. O'Brien* rulings to exercise state civil-regulatory hunting and fishing enforcement against Native Americans.[27] This triggered litigation between Gov. Stitt and several large tribes, including the Choctaw, Cherokee and Chickasaw Nations, supported by Attorney General Gentner Drummond. In November 2025, the large tribes filed a federal lawsuit against Governor Stitt, his special prosecutor and the Oklahoma Department of Wildlife to stop them from enforcing the regulations, which they claimed violated their sovereign treaty rights.[28] Meanwhile, Attorney General Drummond subsequently issued Attorney General Opinion 2025-19, which declared Gov. Stitt's hunting enforcement to be unlawful.[29] He declared that federal law preempts and thus prohibits Oklahoma from prosecuting tribal citizens for exercising hunting rights on their own reservations. In response, Gov. Stitt brought an application for an original action in the Oklahoma Supreme Court, seeking to overturn Attorney General Drummond's opinion.[30]

On March 24, 2026, the Oklahoma Supreme Court unanimously rejected the governor's application, concluding that the dispute was already pending in federal court and fundamentally was a matter of federal law, and thus tribal jurisdiction and comity counseled in favor of deferring to the federal court's determination. Several justices filed short concurring opinions, including one by Chief Justice Rowe, joined by Justice Kane, which noted that "[t]he federal court is not bound by the reasoning of [AG Drummond's] Opinion and can reject the analysis of federal law on which the Opinion relies. Once the federal court resolves this question, its decision – grounded in federal law – will likewise settle state question[s] addressed in the Opinion."[31]

CONCLUSION

Alicia Stroble's case was a pivotal moment in the post-*McGirt* legal landscape. It tested whether states can disregard federal Indian law in civil contexts. The U.S. Supreme Court may ultimately decide these federal preemption issues in another future case, particularly on still percolating civil-regulatory hunting and fishing rights challenges. Though many expected it would be, *Stroble* was ultimately not that vehicle.

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ENDNOTES

1. 2025 OK 48, —P.3d – (petition for *certiorari* filed on Sept. 29, 2025, No. 25-382, petition denied, April 6, 2026).

2. *McGirt v. Oklahoma*, 140 S.Ct.. 2452, 207 L.Ed.2d 985 (2020).

3. *Application of the Oklahoma Individual Income Tax to Native Americans*, OAC 710:50-15-2(b), cites the qualifying factors for tribal income exemption from Oklahoma Tax and incorporates the "Indian country" definition in 18 U.S.C. 1151, specifically addressed in the *McGirt* decision.

4. Okla. Admin. Code §710:50-15-2.

5. *In the Matter of the Income Tax Protest of Alecia Stroble*, Case No T-21-014-S (April 12, 2022).

6. OTC Order No. 2022 10 04 14 (Oct. 5, 2022).

7. This includes the five large tribes with *McGirt* reservations that occupy most of eastern Oklahoma. The Cherokee, Chickasaw and Choctaw filed a joint *amicus curiae* briefs while the Seminole and Creek Nations filed separate amici curiae briefs.

8. *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973).

9. 508 U.S. 114 (1993)(for the categorical prohibition on state taxation of an Indian citizen's income to apply, "it is enough that the member live in 'Indian country.' Congress has defined Indian country broadly . . . . See 18 U.S.C. §1151" and "we ask only whether the land is Indian country" under Section 1151).

10. See Supra note *3i*.

11. OAC 710:50-15-2(a)(1).

12. See Supra note 1 at ¶10.

13. *Id.* at ¶11 (endnote 3 omitted).

14. Supra note 1, Rowe Concurrence ¶1,¶3,.

15. *Id.*, Kuen Concurrence ¶1, ¶6, ¶7.

16. *Id.,* Winchester Concurrence ¶1, ¶4.

17. *Id.,* Darby Concurrence ¶1.

18. *Id.,* Kane Concurrence ¶37.

19. *Id.,* Kane Concurrence ¶38.

20. *Id.,* Kane Concurrence ¶42.

21. *Id.* Dissent.

22. *Alicia Stroble v. Oklahoma Tax Commission*, Petition for a Writ of Certiorari in the Supreme Court of the United States, No. 25-382.

23. National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, Native American Finance Officers Association, and the National Intertribal Tax Alliance – Amicus Brief, No 2025-382, 6.

24. Seminole Nation Amicus Brief, No. 2025-382, 5.

25. *DeCoteau v. Dist. Cnty. Ct. for Tenth Jud. Dist.*, 420 U.S. 425, 427 n.2 (1975); *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, 123 (1993); *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998); *Mustang Production Co. v. Harrison*, 94 F.3d 1382 (1996), certiorari denied 117 S.Ct. 1288, 520 U.S. 1139, 137 L.Ed.2d 364 (1997) (involving the Cheyenne & Arapaho Tribes of Oklahoma).

26. For scholarship, see Stacy Leeds and Lonnie Beard, *A Wealth of Sovereign Choices: Tax Implications of* McGirt v. Oklahoma *and the Promise of Tribal Economic Development*, 56 Tulsa L. Rev. 417 (2021).

27. *Wade Free, et. al. and Gov. Kevin Stitt v. Gentner Drummond*, MA-123759 (Okla.) mandamus action filed on Jan. 27, 2026, ¶25-38, recounting the rapidly increasing legal tensions in the fall of 2025 over state game wardens and a special prosecutor enforcing state civil hunting license requirements on Native Americans on the reservation. Governor Stitt relied upon subsequent state court rulings including the *Stroble*, and *City of Tulsa v. O'Brien*, — P.3d —, 2024 OK CR 31, 2024 WL 5001684 decisions, as well as the post-*McGirt* decision of *Oklahoma v. Castro*-Huerta, 597 U.S. 629 (2022) to support enforcement.

28. *See Cherokee Nation v. Free, et. al.,* No. 25-cv-630-CVE-JFJ (N.D. Okla.) (Complaint filed Nov. 18, 2025). The lawsuit is pending on a request for a preliminary and permanent injunction. On June 11, 2026, the court denied Oklahoma's motions to dismiss finding that "colorable claims that it has treaty rights" and directed the parties to propose a scheduling order by June 25, 2026, to resolve the case. The companion case is *Muscogee (Creek) Nation v. Free,* No. 26-CV-0003-CVE-JFJ (N.D. Okla.) (similar claims and ruling also on June 11, 2026).

29. OK AG OP 2025-19 (Dec. 18, 2025) (AG Drummond opined that federal law preempts state application of the Oklahoma Wildlife Conservation Code to tribal members hunting and fishing on the Cherokee, Chickasaw, and Choctaw reservations. The opinion, which explicitly noted that certain tax and civil rulings do not apply (including the *Stroble* and *O'Brien* decisions) prohibit the state from requiring licenses or prosecuting Native Americans for wildlife activities on their respective reservations). His opinion is available at https://bit.ly/4fgP90I On May 13, 2024, in *Muscogee (Creek) Nation v. City of Henryetta, OK*, No. 25-CV-227-JAR (E.D. Okla.) the district court enjoined the city from prosecuting an Indian, whether member or non-member for conduct occurring within Indian country absent explicit congressional authorization. The district court refused to rely on the state appellate decision in *O'Brien* or *Castro-Huerta.* In short, the court wrote "[w]hen federal and state law conflict, state law yields." Sl. op. at 3. https://bit.ly/4wHmEzM.

30. *Wade Free, et. al. and Gov. Kevin Stitt v. Gentner Drummond*, MA-123759 (Okla.) mandamus action filed on Jan. 27, 2026.

31. *Id.* at ¶2. Justice Kuehn concurred in the result noting that "[t]his Court has no jurisdiction over criminal prosecutions" and should therefore decline to assume original jurisdiction. Id. at ¶1. Justice Jett, joined by Justice Winchester noted that the litigation needed factual development and the federal court had the matter in hand. *Id.* at ¶1 & ¶5. They also noted that the AG Opinions are "merely advisory". *Id.* at ¶2 & ¶5.

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Legal Potpourri

Objective Versus Subjective Standards in Negligence *Per Se*

How To Craft Viable Negligence *Per Se* Claims and How To Challenge Improper Claims

By William "Alex" Orr

NEGLIGENCE *PER SE* IS OFTEN INTRODUCED TO LAW STUDENTS as a seemingly straightforward doctrine: when a defendant violates a statute, liability for negligence may follow. Yet this simplified understanding obscures a critical limitation embedded within the doctrine – namely, not all statutory violations are created equal. While negligence *per se* allows courts to adopt legislatively prescribed standards of conduct, its application depends on whether the statute imposes a fixed, objective duty, rather than a flexible, circumstance-dependent standard. This distinction, though frequently overlooked in both academic instruction and early practice, has become increasingly significant in Oklahoma jurisprudence. As recent decisions illustrate, statutes incorporating subjective terms such as "reasonable," "prudent," or "safe" fail to establish the kind of definitive rule necessary to support negligence *per se*, instead relegating the claim to traditional negligence analysis.

Negligence *per se* is, of course, a term used when a duty of care is based on a violation of specifically prescribed conduct required by a statute.[1] When courts adopt the statutory standard for a cause of action for negligence, the violation of the statute constitutes negligence *per se* if the other elements of negligence are present.[2] In order to establish negligence *per se* on the basis of statutory violation, a party must show that the injury was caused by the statute's violation, the injury was of the type intended to be prevented by the statute, and the injured party was a member of the class meant to be protected by the statute.[3] These are the elements of negligence *per se* in Oklahoma and mirror the elements found in the Restatement on Torts.[4]

While the violation of a statutory duty imposed for the protection of person or property constitutes negligence *per se* generally, the standard of duty within the statute must be fixed and defined by law, and be the same in all circumstances.[5] In other words, where a negligence *per se* instruction does not impose positive, objective standards, it is inappropriate because determination of whether conduct measures up to the standards of conduct enjoined by the statute depends on the conditions and circumstances proved and requires evaluation of the evidence.[6] The issue becomes then one of general, common law negligence, not of negligence *per se*.[7] In essence, where violating the specific language of the statute depends on the conditions and

circumstances proved and requires evaluation of the evidence, that statue cannot serve as an appropriate basis for negligence *per se* and requires a general negligence analysis instead.[8] This specific caveat in the negligence *per se* framework intrinsically makes sense: When a statute incorporates the ordinary negligence standards, negligence *per se* cannot apply because the statue does not establish a specific standard of conduct different from the common law standard of ordinary care.[9] This standard is the status quo in other jurisdictions as well.[10]

USING OBJECTIVE STANDARDS TO CRAFT NEGLIGENCE *PER SE* CLAIMS

When making negligence *per se* claims in furtherance of a client, attorneys should be cognizant of the positive, objective standards required to support such claims.[11] The Oklahoma Court of Civil Appeals determined the sufficiency of 47 O.S.1981 §14-106 as the basis for negligence *per se* in *Murry v. Advanced Asphalt Co.*[12] The statute mandated chains "sufficiently

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> In the end, the story of negligence *per se* is not one of automatic liability simply because a statute is cited, but of careful line-drawing between rules and standards.

strong to prevent parting of the trailer from the drawing vehicle," and the court determined that towing a trailer without these required safety chains constituted negligence *per se*.[13] Despite this somewhat qualitative language about chain strength, the Court of Civil Appeals determined that the statutory requirement was fixed enough to establish a clear duty.[14]

Consider also, for example, 27 O.S. §2-6-105(A), which the 10th Circuit, applying Oklahoma law, determined to be a viable basis for a negligence *per se* claim in *Lazy S Ranch Properties, LLC v. Valero Terminaling and Distribution Company*.[15] Section 2-6-105(A) prevents pollution of any waters of the state, with the statute's declaration of policy stating that it is public policy to provide that no waste or pollutant be discharged into any waters of the state or otherwise placed in a location likely to affect such waters.[16] The 10th Circuit not only allowed such standard to support a negligence *per se* claim here, but explained that the court had previously recognized that this specific statute may impose a duty to prevent pollution under Oklahoma law.[17] This holding underscores the type of statutory language capable of supporting negligence *per se*: a clear, affirmative prohibition that does not depend on case-by-case determinations of reasonableness. Unlike statutes that hinge on subjective qualifiers, §2-6-105(A) establishes a concrete, enforceable standard: Pollution is simply not permitted.[18] In that sense, liability turns on whether a discharge occurred and whether it affected protected waters, not on whether the defendant acted "reasonably" under the circumstances. Accordingly, *Lazy S Ranch* illustrates how statutes framed as categorical prohibitions or mandates are far more likely to satisfy the objective standard requirement necessary to sustain a negligence *per se* claim.

From a practical standpoint, *Murry* and *Lazy S* provide a useful blueprint for crafting viable negligence *per se* claims. First, counsel should identify statutes that impose concrete, affirmative duties, such as requirements for specific conduct or to refrain from specific conduct.[19] These statutes often contain language tied to observable or testable conditions (*e.g.*, presence of equipment, compliance with numerical thresholds, or adherence to defined procedures). Second, the statutory violation should be capable of proof independent of a broader reasonableness analysis. If proving the violation requires the same type of evidence and argument similar to common law negligence, such as whether conduct was "reasonable under the circumstances," the claim likely collapses into ordinary negligence.[20] Third, attorneys should frame the claim around the statute's specific mandate, emphasizing how the defendant's conduct failed to meet that mandate in a clear, binary way.[21]

IDENTIFYING SUBJECTIVE STANDARDS TO CHALLENGE NEGLIGENCE *PER SE* CLAIMS

When challenging a negligence *per se* claim, through a dismissal motion or a summary judgment motion, attorneys should be cognizant of the subjective standards that may make the referenced statute inapplicable for supporting a negligence *per se* claim. The Supreme Court of Oklahoma gave clear guidance on this principle in *Wade v. Reimer*, where the court considered the applicability of

47 O.S.Supp.1955 §121.3(a) to serve as the basis for a negligence *per se* claim.[22] The provisions of that statue declared that a vehicle shall be operated "at a careful and prudent speed not greater nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and any other conditions then existing, and no person shall drive at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead."[23] Per the court, the terms of this statute did not impose any positive objective standards, nor did they prescribe any greater or lesser degree of care than that required of a driver under the prevailing rules at common law.[24] Before a driver may be found to have violated this statute, the jury would necessarily have to conclude that the driver's actions amount to common law negligence, which thus made any negligence *per se* instruction redundant.[25] The court deemed it was fundamental error to provide the jury a negligence *per se* instruction under these circumstances.[26]

Unlike the objective statutes discussed above, such as the safety chain requirement in *Murry* and the categorical prohibition against pollution in *Lazy S Ranch*, §121.3(a) did not establish a fixed, measurable rule of conduct. From a practical standpoint, words and phrases such as "reasonable," "prudent," "safe," "proper," "appropriate," "disregard," or "due regard" are strong indicators that the statute does not impose a bright-line rule.[27] Likewise, statutes that explicitly require consideration of surrounding conditions, traffic, weather, visibility, or other circumstances, signal that compliance can generally not be determined without contextual judgment.[28] These features should be highlighted to demonstrate that the statute lacks the fixed standard required for negligence *per se*.

Procedurally, this argument can, and should, be raised early and often. At the pleading stage, counsel can argue that the cited statute fails as a matter of law to support negligence *per se* because it lacks an objective standard. At summary judgment, the same argument can be reframed to show that, even taking the facts in the light most favorable to the plaintiff, the alleged violation depends on a subjective evaluation reserved for ordinary negligence. In either posture, the goal is to force the claim out of the negligence *per se* framework and back into the traditional, fact-intensive negligence analysis.

PRACTITIONER'S TAKEAWAY

In the end, the story of negligence *per se* is not one of automatic liability simply because a statute is cited, but of careful line-drawing between rules and standards. As discussed at the outset, what begins as a seemingly straightforward doctrine quickly reveals itself to be far more nuanced in practice. The cases and principles explored above demonstrate that the true dividing line is whether the statute at issue supplies a fixed, objective command or merely echoes the flexible, circumstance-driven inquiry of ordinary negligence. When a statute operates as a bright-line rule, it can transform a negligence claim into a clear question of compliance. But when the statute depends on terms like "reasonable," "prudent," or "proper," it collapses back into the same fact-intensive analysis that governs common law negligence.

The practitioner's task is not simply to identify a statutory violation, but to critically evaluate the nature of the duty imposed. Crafting viable claims and dismantling improper ones requires returning to that foundational principle: Negligence *per se* applies only where the law itself has already defined the standard of conduct in objective, unmistakable terms. Anything less is not negligence *per se* at all, but negligence in its traditional form. In that way, the doctrine comes full circle, reinforcing the lesson introduced at the beginning: The law does not reward rote invocation of statutes, but careful, disciplined analysis of what those statutes *actually require*.

ABOUT THE AUTHOR

William "Alex" Orr is an attorney with Coffey, Senger, Hancock & Harmon PLLC in Tulsa. His practice centers on appellate advocacy, complex motion practice, and legal research in state and federal courts. Mr. Orr focuses on developing persuasive written advocacy, including dispositive motions, appellate briefs, and other high-stakes litigation filings, with an emphasis on thorough legal analysis and strategic argument development.

ENDNOTES

1. *Smith v. Barker*, 2017 OK CIV APP 69, ¶27, 419 P.3d 327.
2. *Mansfield v. Circle K .Corp.*, 1994 OK 80, ¶6, 877 P.2d 1130.
3. *See, e.g., Hamilton v. Allen*, 1993 OK 46, ¶9, 852 P.2d 697; *see* also *Ohio Cas. Inc. Co. v. Todd*, 1991 OK 54, ¶8, 813 P.2d 508.
4. *Id*; *Restatement (3d) on Torts: Liability for Physical Harm* (adopted 2005; published 2010), §14: Statutory Violations as Negligence Per Se.
5. *Smith*, 2017 OK CIV APP at ¶29; *Chicago, R.I. & P. Ry. Co. v. Pitchford*, 1914 OK 79, 143 P. 1146 (court syllabus).
6. *Smith*, 2017 OK CIV APP at ¶29.

7. *See Wade v. Reimer*, 1961 OK 44, ¶5, 359 P.2d 1071 (involving a statute which required a vehicle be operated at a careful and prudent speed not greater nor less than is *reasonable and proper*); cf. *Smith*, 2017 OK CIV APP at ¶¶21-23 (involving a statute requiring that a vehicle yield the right-of-way, while turning on a steady red light, to a pedestrian and other traffic lawfully within an adjacent crosswalk).

8. *Smith*, 2017 OK CIV APP at ¶29.

9. *See Orthman v. Premiere Pediatrics, PLLC*, 2024 OK CIV APP 7, 545 P.3d 124, 134 (approved for publication by the Oklahoma Supreme Court); *see also Armstrong v. Health Care Serv. Corp.*, 2023 WL 359519, Case No. 22-CV-377-CVE-JFJ, at *5 (N.D. Okla. Jan. 23, 2023) (dismissing negligence *per se* because "the statute fails to provide any positive objective standards that can easily be applied to determine if a defendant's conduct violates the statute, and the finder of fact would be required to evaluate the facts and apply ordinary negligence principles to determine if the defendant violated a tort duty to the plaintiff").

10. *See, e.g., Ibarra v. Gastelum*, 249 Ariz. 493, 471 P.3d 1028, 1030-31 (where the Arizona Court of Appeals explained that "Negligence per se is limited to situations involving a specific legal requirement, not a general standard of care. To provide the basis for a negligence per se claim, a statute must proscribe certain or specific acts … Therefore, if a statute defines only a general standard of care … negligence per se is inappropriate.") (cleaned up); *Boyd v. Moore*, 919 N.E.2d 283, 287 (Ohio Ct. App. 2009) (where the Ohio Court of Appeals stated in simple terms, if "a determination of statutory compliance requires a subjective analysis," negligence *per se* will not apply); *Supreme Beef Packers, Inc. v. Maddox*, 67 S.W.3d 453, 456 (Tex. App. 2002) (where the Texas Court of Appeals stated that, "Where a statute incorporates the ordinarily prudent person standard, negligence per se does not apply because the statute does not establish a specific standard of conduct different than the common-law standard of ordinary care. In those cases, it is redundant to submit a question on the statutory standard or to instruct the jury regarding it, and the negligence per se standard is subsumed under the broad-form negligence question.") (cleaned up); *see also Rains v. Bend of the River*, 124 S.W.3d 580 (Tenn. Ct. App. 2003) (explaining the same for Tennessee law); *Kentucky Fried Chicken of Cal., Inc. v. Superior Court*, 14 Cal.4th 814, 59 Cal.Rptr.2d 756, 927 P.2d 1260 (Cal. 1997) (explaining the same for California law); *Borns ex rel. Gannon v. Voss*, 70 P.3d 262 (Wyo. 2003) (explaining the same for Wyoming law).

11. *Smith*, 2017 OK CIV APP at ¶29.

12. *Murry v. Advanced Asphalt Co.*, 1987 OK CIV APP 88, ¶¶8-12, 751 P.2d 209.

13. *Id.*

14. *Id.*

15. *Lazy S Ranch Properties, LLC v. Valero Terminaling and Distribution Company et al.*, 92 F.4th 1189, 1201-02 (10th Cir. 2024).

16. *Id.*

17. *Id.* (citing *BP Pipelines (N. Am.) Inc. v. C.D. Brown Const., Inc.*, 473 F. App'x 818, 828 (10th Cir. 2012).

18. *Id.*

19. *Murry v. Advanced Asphalt Co.*, 1987 OK CIV APP at ¶¶8-12, 751 P.2d 209; *Lazy S Ranch Properties, LLC v. Valero Terminaling and Distribution Company et al.*, 92 F.4th at 1201-02 (10th Cir. 2024).

20. *Orthman*, 2024 OK CIV APP at ¶24.

21. *Id*; *Chicago, R.I. & P. Ry. Co. v. Pitchford*, 1914 OK 79, 143 P. 1146 (court syllabus).

22. *Wade*, 1961 OK at ¶5.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id*; *see also Conway v. Lone Star Transp., LLC*, 2020 WL 609750, at *3 (N.D. Okla. 2020) (holding that "driving a vehicle 'in willful or wanton disregard for the safety of persons or property' is not a positive objective standard").

28. *Athey v. Bingham*, 1991 OK 82, ¶9, 823 P.2d 346 (citing *Agee v. Grant*, 1966 OK 31, 412 P.2d 155) (where Oklahoma Supreme Court recognized that a statute requiring drivers to be able to stop within clear distance depends on physical conditions at the time and place; whether the statute was violated depends on the circumstances proved).

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.*

2027 OBA Board of Governors Vacancies

Nominating Petition Deadline: 5 p.m. Monday, Sept. 14

OFFICERS

President-Elect
Current: Jana L. Knott, El Reno
(One-year term: 2027)
Ms. Knott automatically becomes OBA president Jan. 1, 2027
Nominee: **S. Shea Bracken, Edmond**

Vice President
Current: S. Shea Bracken, Edmond
(One-year term: 2027)
Nominee: **Jeff D. Trevillion, Oklahoma City**

BOARD OF GOVERNORS

Supreme Court Judicial District 1
Current: William Ladd Oldfield, Ponca City
Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers and Washington counties
(Three-year term: 2027-2029)
Nominee: **Vacant**

Supreme Court Judicial District 6
Current: Philip D. Hixon, Tulsa
Tulsa County
(Three-year term: 2027-2029)
Nominee: **Vacant**

Supreme Court Judicial District 7
Current: Chad Alexander Locke, Muskogee
Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties (Three-year term: 2027-2029)
Nominee: **Vacant**

Member at Large
Current: Jeff D. Trevillion, Oklahoma City
Statewide
(Three-year term: 2027-2029)
Nominee: **Vacant**

SUMMARY OF NOMINATIONS RULES

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting on Nov. 13, during the 2026 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2026.

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
S. Shea Bracken, Edmond

Nominating petitions have been filed nominating S. Shea Bracken, Edmond, for president-elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2027. Fifty of the names thereon are set forth below:

Justin D. Meek, Jase T. George, Douglas W. Driscoll, Kyle R. Prince, Cooper M. Larson, Thomas A. Paruolo, Benjamin R. Grubb, Ryan L. Dean, Lance C. Cook, Thomas R. Kendrick, Joseph P. Dowdell, Michael P. Garcia, Kenneth G. Cole, Cody A. Reihs, John D. Cowan, Cody J. Cooper, Kathryn D. Terry, Amelia H. Marquis, Jennifer L. Miller, Byrona J. Maule, Patrick L. Hullum, Marc Edwards, Clayton Ketter, Lyndon W. Whitmire, Colby D. Karcher, Kelsey A. Chilcoat, Phoebe M. Barber, Mark E. Hornbeek, Thomas G. Wolfe, Amy D. White, Michael C. Mordy, Conner D. Dunn, Bradley J. Wilson, Carrie D. Pfrehm, Timothy L. Abel, John J. Ditmars III, Dacia E. Abel, Matthew B. Wade, Kelly S. Bishop, Cathy M. Christensen, Cole A. Taubel, Andy J. Campbell, Sherman T. Dunn, D. Kenyon Williams, Jr., Jeff D. Trevillion, Molly A. Aspan, Jana L. Knott, Amber Peckio, Christopher D. Jones and Alexandra J. Gage

A total of 79 signatures appear on the petitions.

Vice President
Jeff D. Trevillion, Oklahoma City

Nominating petitions have been filed nominating Jeff D. Trevillion, Oklahoma City, for vice president of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2027. Fifty of the names thereon are set forth below:

S. Shea Bracken, Kate N. Dodoo, Molly A. Aspan, Blayne P. Norman, Philip D. Hixon, Lucas M. West, Alexandra J. Gage, Jana L. Knott, D. Kenyon Williams Jr., Henry A. Meyer III, William H. Hoch, Michael S. Laird, Adam W. Childers, Craig M. Regens, James W. Larimore, Anthony J. Hendricks, Vicki Z. Behenna, Timila Stacy Rother, Camal Pennington, Jimmy K. Goodman, Sarah M. Simpson, Amanda Mayo Finch, Wilson D. McGarry, Scott A. Butcher, Lucas M. Meacham, Micah R. Fontaine, Duncan A. Merchan-Breuer, John C. Webb, Andrew E. Henry, James R. Kalsu, Jordan K. Field, Gary A. Bryant, Hank Herren, Nicholas M. Coffey, Glen D. Johnson Jr., Elizabeth A. Scott, Melanie Wilson Rughani, Andrew N. Rader, David M. Sullivan, John M. Thompson, James R. Hicks, Sherman T. Dunn, Shannon R. Brown, Katlyn M. Caldwell, Erin L. Reynolds, David E. Hall, Susan E, Elliott, Stephen R. Stephens, Brian R. Swenson and Shelley R. Ramsey.

A total of 59 signatures appear on the petitions.

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OKLAHOMA ACCESS TO JUSTICE FOUNDATION

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF JOEL EDWARD SCOTT, III, SCBD # 8107 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S. 2025, ch. 1, app. 1-A, that a hearing will be held to determine if JOEL EDWARD SCOTT, III should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **SEPTEMBER 28 – 29, 2026**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

Big Changes Ahead for OBA CLE: We Listened, and We're Delivering

By Gigi McCormick

OVER THE PAST YEAR, the CLE Department has been listening closely to our members. We're excited to share two changes that reflect that feedback, along with a straightforward update on pricing.

LIVE CHAT IS COMING TO LIVE WEBCASTS

One of the most consistent requests we've heard from members is the ability to interact during live webcast programming: to ask questions in real time, get quick clarifications from speakers, and engage with the material as it's happening, rather than after the fact.

We heard you. Starting **Sept. 15**, live chat will be available for all live webcast CLE programs. This feature will let attendees submit questions and comments directly during the presentation, giving speakers the chance to address them live and giving attendees a more dynamic, engaged learning experience, even from behind a screen.

This has been one of the top items on our members' wish list, and we're proud to say it's no longer a request. It's a rollout date.

A NEW COLLABORATION EXPANDS WHAT'S AVAILABLE TO YOU

We're also pleased to announce a new collaboration with Berkeley Law School that will give OBA members access to a broader library of CLE programming beyond what our department produces in-house.

This means more variety, more perspectives, and more flexibility in how members meet their continuing education requirements. Whether you're looking to fill a gap in a specific practice area or simply want access to programming from a different institutional voice, this collaboration opens new options without requiring you to look outside your OBA membership to find them.

Berkeley Law programming will be released on **Sept. 15**, the same day live chat launches, and will be accessible directly through our CLE catalog. We wanted our members to know this is coming and that it's a direct result of our effort to expand the value of CLE membership.

WHAT THIS MEANS FOR PRICING

We know that any conversation about new features naturally raises a question: what will it cost? We want to be transparent. With these enhancements, including the technology investment behind live chat and the added access through our new collaborator, members can expect program costs to increase by an **average of $10 per program**.

We don't take pricing changes lightly, and we've worked to keep this increase modest and proportionate to the value being added. Our goal has always been to make sure every dollar spent on CLE with the OBA translates into a better, more useful experience – not just more content, but content and tools that meet the way our members want to learn.

These updates reflect our ongoing commitment to providing practical, high-quality CLE to meet the needs of Oklahoma lawyers, and I encourage you to reach out to me with any questions you may have. We look forward to bringing even more improvements to strengthen the value of your OBA CLE experience, and we are excited to offer you an enhanced CLE experience this fall.

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

2026 LEGISLATIVE DEBRIEF

SAVE THE DATE

AUGUST 21

Oklahoma Bar Center

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DR. SEAN BUTLER, CAMBRIDGE CENTRE FOR ANIMAL RIGHTS LAW

More speakers will be announced soon!

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From the Executive Director

A Season To Refocus

The End of Summer's Hidden Opportunities

By Janet Johnson

As summer prepares to leave us behind, lawyers have a valuable opportunity to do more than return to full calendars and familiar routines. I challenge you to pause, reassess, and approach the remainder of the year with renewed focus and attention. Before diving back into packed calendars, overflowing inboxes, and court deadlines, there is value in taking a moment to reset. Summer has a way of changing our pace. Whether you managed to squeeze in a family vacation, enjoy a few long weekends, or simply slow down enough to catch your breath, the transition back to a full legal workload presents an opportunity that often goes unnoticed: the chance to refocus with intention.

The legal profession rarely slows down for long. Clients' needs continue, courts maintain their schedules, and deadlines have a habit of arriving sooner than expected. Yet the weeks following summer can serve as a natural "new beginning," not unlike January or the start of a new school year. Rather than simply returning to the same routines, lawyers can use this time to evaluate what is working, identify what is not, and recommit to the habits that support professional success.

One of the most effective ways to refocus is by reassessing priorities.

It is easy to become consumed by the urgent at the expense of the important. Responding to emails, returning phone calls, and managing daily crises are essential parts of practice, but they should not crowd out long-term goals. Consider taking a few minutes to review your objectives for the remainder of the year. Are there continuing legal education courses you've postponed? Have you committed enough time to mentoring younger attorneys or building relationships with colleagues? A brief assessment can provide clarity and direction for the months ahead.

Refocusing also means organizing your practice. A cluttered desk, an overloaded email inbox, or an outdated task list can create unnecessary stress. Investing a little time in clearing physical and digital clutter often pays dividends in efficiency and peace of mind. Updating calendars, reviewing upcoming deadlines, and ensuring case files are organized helps eliminate distractions and allows you to concentrate on serving clients effectively.

The return from summer is also an excellent time to reconnect with the legal community. The practice of law can sometimes feel isolating, particularly for solo practitioners or attorneys in smaller offices. Attending continuing legal education programs, participating in local or specialty bar activities, or simply reaching out to a colleague for coffee can strengthen professional relationships and remind us that we are part of a larger profession committed to serving the public and upholding the rule of law. Along these lines, I encourage you to save the date in your calendar for this year's OBA Annual Meeting, set for this Nov. 11-13 at the Skirvin Hotel in Oklahoma City. This year's meeting will present an excellent opportunity to reconnect and recalibrate with your friends and fellow practitioners as we attend to the important business of our association.

As we refocus, it is worth remembering why we entered this profession in the first place. Behind every file is a person seeking guidance, stability, or justice. Every contract drafted, hearing argued, and estate planned represents an opportunity to improve someone's life. The daily pressures of practice can sometimes obscure that larger purpose, but it remains the foundation of what we do.

The months ahead will undoubtedly bring demanding cases, unexpected challenges, and full calendars. They will also bring opportunities to learn, grow, and make a meaningful difference for clients and communities across Oklahoma. By approaching this post-summer season with renewed focus, clear priorities and a commitment to excellence, we position ourselves not only for a productive finish to the year but also for a more fulfilling practice.

Summer may be behind us, but the energy it provided does not have to disappear with the changing seasons. A thoughtful reset today can create momentum that carries through the remainder of the year. Here's to approaching the months ahead with renewed purpose, sharper focus, and the confidence that comes from being prepared for whatever lies ahead.

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

Your Client Is Already Using AI. Now What?

By Julie Bays

LAWYERS HAVE SPENT the last few years discussing how artificial intelligence can be used in the practice of law. That discussion is important, but it is no longer the only AI issue in the attorney-client relationship. Clients are also using AI. They are using it before they call a lawyer, after they hire a lawyer and sometimes while litigation is pending. They may use AI to understand a demand letter, summarize a contract, draft a statement, evaluate a claim, prepare for a meeting or decide whether they think their lawyer is doing a good job.

This behavior is understandable. Legal problems are stressful. Clients want immediate answers. AI tools are available, easy to use and often presented as conversational helpers. But when clients use public or consumer AI tools for legal problems, they may create risks they do not understand. They may disclose confidential facts. They may input privileged communications into a third-party platform. They may create prompts and outputs that become relevant in discovery. They may rely on inaccurate legal analysis. Or they may create a written record that complicates the lawyer's ability to advise them later.

For lawyers, the practical question is not whether clients should ever use AI. They will. The practical question is how lawyers should manage client AI use in a way that protects confidentiality, preserves privilege where possible, maintains competent representation and improves the quality of legal services.

A recent federal case, *United States v. Heppner*, illustrates why this issue needs attention. In that case, a criminal defendant used Claude, Anthropic's generative AI chatbot, and later claimed that the resulting AI materials were protected by attorney-client privilege and the work-product doctrine. The court rejected those claims. The court reasoned that Claude was not an attorney, that the communications were not confidential in light of the platform's privacy terms and potential third-party disclosures, and that the materials were not prepared at the direction of counsel or reflective of counsel's strategy.[1]

The lesson from *Heppner* should not be overstated. It does not mean every AI-related prompt or output is automatically discoverable, and other courts have reached more protective work-product results in different circumstances.[2] But *Heppner* does offer an important warning: When clients independently use public AI tools about their legal problems, lawyers may later have to deal with privilege, confidentiality and discovery consequences that could have been reduced with better client instructions at the beginning of the representation.

The better approach is practical and preventive. Lawyers should do three things: Ask clients about AI use, instruct clients on safe boundaries, and preserve AI-related materials when litigation is pending or reasonably anticipated.

ASK ABOUT AI USE AT INTAKE

Lawyers routinely ask new clients whether they have signed documents, spoken with opposing parties, received letters, posted on social media or saved relevant text messages. AI use should now be added to that intake conversation.

This does not need to be complicated. Lawyers can simply ask, "Have you used ChatGPT, Claude, Gemini, Copilot, Perplexity or any other AI tool to research, summarize, draft or analyze anything related to this matter?" If the answer is yes, the lawyer should ask what tool was used, what information was entered, whether any documents were uploaded, whether any communications with counsel were copied into the tool and whether the client still has access to the chat history, prompts, outputs or uploaded files.

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This question matters for several reasons. First, it helps the lawyer understand what the client may already believe about the legal problem. A client may arrive with confidence based on an AI-generated explanation that is incomplete, jurisdictionally wrong or simply invented. The lawyer needs to know whether the client's expectations have been shaped by an AI tool before meaningful legal advice can begin.

Second, the question helps identify confidentiality concerns. A client may have pasted a demand letter, settlement communication, contract, financial record, medical record or family-law fact into a public AI tool. The client may not appreciate that, "I was just asking a question" can involve transmitting sensitive information outside the attorney-client relationship. Lawyers cannot address that risk if they do not know it happened.

Third, the question helps identify possible privilege and work-product issues. A client who uploads attorney emails, draft pleadings, strategy notes or summaries of lawyer conversations into an AI tool may create waiver arguments or discovery disputes later. Even when privilege is not waived, the existence of the AI interaction may, itself, require analysis.

For many firms, the simplest fix is to add AI questions to the intake checklist. This is especially important in matters where the client may be tempted to ask an AI tool for immediate legal guidance before or during the representation.

GIVE CLIENTS CLEAR INSTRUCTIONS

Asking about prior AI use is only the first step. Lawyers should also give clients clear instructions about future AI use during the representation.

Many clients do not distinguish between a public chatbot, a legal research tool, a private enterprise system, a document automation product and an AI feature embedded in software they already use. To the client, all of these may simply be "AI." Because the technology is confusing, client instructions should be direct and practical.

A lawyer might tell a client:

> *Please do not put information about your case into ChatGPT, Claude, Gemini, Copilot, Perplexity or any other AI tool unless you talk with us first. This includes*

documents, emails, texts, letters, court papers, records or anything we have discussed. Using AI for your case could affect confidentiality, privilege or strategy.

Lawyers should also explain why this matters. Clients may assume that a chatbot conversation is private because it feels private. They may not read terms of service, privacy policies or data-retention settings. They may not know whether the tool stores prompts, uses inputs to improve the model, allows human review, retains uploaded files, shares information with affiliates or responds to legal process.

Ethics guidance for lawyers has repeatedly emphasized that lawyers must understand how AI tools handle information, including data retention, data sharing and the use of prompts or outputs for training. Clients need a simplified version of the same warning.

The instruction should also cover AI meeting tools. More clients are using AI notetakers, transcription tools and meeting summaries. If a client records or transcribes a lawyer-client conversation using the client's own AI tool, the lawyer may not know where the recording is stored, how long it is retained, whether it is used for training, whether the summary is accurate or whether it could later be obtained in discovery. Recent ethics and risk-management guidance has cautioned lawyers to address these tools directly with clients because they may create confidentiality, privilege, consent, retention and accuracy risks. [3]

Lawyers may need a standard client instruction for the beginning of representation, but the instruction should not be treated as a one-time formality. It should be repeated when the risk becomes more concrete. For example, a lawyer might remind a client not to use AI before the client drafts a statement, responds to a government inquiry, prepares for deposition, reviews discovery, communicates with witnesses or makes social media posts about the dispute.

The rise of client AI use is not just a technology issue. It is a client communication issue.

PRESERVE AI MATERIALS WHEN LITIGATION IS PENDING OR ANTICIPATED

The third practical duty is preservation. Once litigation is pending or reasonably anticipated, lawyers should consider whether AI-related materials may be relevant electronically stored information.

AI materials may include prompts, outputs, uploaded files, chat histories, AI-generated summaries, AI notetaker transcripts, exported conversations, account histories and metadata. Whether those materials are discoverable will depend on relevance, proportionality, privilege, work product, possession, custody, control and the facts of the case. But lawyers should not assume AI materials are irrelevant or immune from discovery simply because they were created in a chatbot.

The discovery issues are already developing. Courts and commentators are beginning to address whether AI prompts and outputs may be protected work product when created by counsel as part of legal strategy. Other cases show that AI conversations can become evidence in a dispute. In *Fortis Advisors, LLC v. Krafton, Inc.*, for example, the Delaware Court of Chancery described a corporate executive's use of an AI chatbot in connection with a disputed business strategy as part of the factual narrative in a contract dispute.[4] *Fortis* is not a privilege decision, but it is a useful warning. The court's discussion of a business executive's AI chatbot use shows that AI prompts and outputs may become part of the evidentiary record when they relate to disputed decisions, motives or strategy.[5]

Preservation advice should be tailored to the matter. A client who used AI once to ask a general question before hiring counsel may present a different issue than a client who uploaded key documents, used AI to draft a statement, summarized privileged communications or relied on AI to make business decisions at the center of the dispute. But lawyers should at least ask enough questions to decide whether preservation is necessary.

In litigation matters, lawyers should consider adding AI-related materials to litigation hold notices. A simple preservation instruction might say:

Do not delete any AI chats, prompts, outputs, uploaded documents, AI-generated summaries or AI meeting transcripts related to this matter. This includes materials created in ChatGPT, Claude, Gemini, Copilot, Perplexity, Zoom

AI Companion, Teams, Otter, Fireflies or similar tools. Please let us know what tools you used and whether you can access or export the related history.

This instruction serves two purposes. It helps prevent spoliation arguments, and it helps the lawyer assess whether any AI materials should be collected, reviewed, withheld as privileged, logged or produced.

Preservation can be technically challenging. Some AI tools allow users to delete conversations. Some allow chat history to be turned off. Some retain data for a limited time. Some store uploaded files separately from chat text. Some meeting tools generate recordings, transcripts and summaries in different locations. Clients may not know where these materials are stored or whether they still exist. The lawyer may need to work with the client, IT personnel or an e-discovery professional to understand the relevant sources.

Lawyers should also be cautious about advising clients to delete AI materials. A general instruction to stop using AI going forward is very different from an instruction to delete past AI conversations. Once litigation is pending or reasonably anticipated, deletion may create avoidable risk. The better practice is to preserve first, then analyze relevance, privilege and work product.

MAKE AI PART OF THE CLIENT CONVERSATION

The rise of client AI use is not just a technology issue. It is a client communication issue. Clients need guidance in plain language. Many clients will not understand the difference between asking a friend, searching Google, using a legal self-help website and uploading documents into a generative AI chatbot. Lawyers are in the best position to explain why those differences matter.

This is also a risk-management issue. A lawyer who never asks about AI use may later learn that the client has uploaded sensitive information, created damaging summaries, relied on incorrect legal conclusions or deleted relevant AI conversations. By contrast, a lawyer who asks early, gives clear instructions and addresses preservation has a much better chance of protecting the client and managing the representation competently.

Clients are going to use AI. Lawyers should assume that some already have. The firms that handle this well will not be the firms that pretend AI use is not happening. They will be the firms that make it part of competent client counseling.

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

ENDNOTES

1. *United States v. Heppner*, No. 1:25-cr-00503-JSR, ECF No. 27, at 1 (S.D.N.Y. Feb. 17, 2026), available at CourtListener. https://bit.ly/4fo4rAw; Further reading and analysis *see* Elizabeth X. Guo, *United States v. Heppner*, *Harv. L. Rev*. Blog (Mar. 23, 2026). https://bit.ly/4ynFf5E.

2. New York City Bar Association Presidential Task Force on Artificial Intelligence and Digital Technologies, *The Intersection of Artificial Intelligence, Privacy, and Privilege* (June 10, 2026). https://bit.ly/4bpTJrW.

3. See N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2025-6, https://bit.ly/3RFJhG7.

4. Fortis Advisors, *LLC v. Krafton, Inc*., C.A. No. 2025-0805-LWW, slip op. at 3, 34–38, 124–25 (Del. Ch. Mar. 16, 2026), https://bit.ly/3TDqY4U.

5. *See* also Jonathan A. Dhanawade, Frank J. Favia Jr. & Andrew J. Stanger, "How a Buyer's AI Conversations Sank Its Earnout Avoidance Strategy," Harv. L. Sch. F. on Corp. Governance (Apr. 20, 2026), https://bit.ly/4wKz3mL.

Board of Governors Actions

Meeting Summaries

The Oklahoma Bar Association Board of Governors met April 17.

REPORT OF THE PRESIDENT

President Peckio reported she reviewed new federal correspondence and pleadings related to new litigation, attended the first meeting of the Legal Desert Task Force, met with a 1L student from the OCU School of Law along with Executive Director Johnson related to rural practice opportunities, worked on her article for the April issue of the *Oklahoma Bar Journal*, attended the Chief Justice Colloquium on Civility and Ethics, met with the executive team and general counsel regarding the Department of Justice proposed CFR on federal attorneys and discipline, met with the Law Schools Committee vice chair, attended the Western States Bar Conference, and she reviewed a brief related to ongoing litigation and approved an invoice for outside counsel.

REPORT OF THE PRESIDENT-ELECT

President-Elect Knott reported she chaired the first meeting of the OBA Legal Desert Task Force, reviewed the Department of Justice proposed CFR on federal attorneys and conferred with the Executive Committee regarding the same, attended the Western States Bar Conference, reviewed an appellate briefing of pending litigation and outside counsel billing, presented a CLE during the Canadian County Bar Association March meeting, virtually attended the OBF Court Grant Committee meeting, attended an OAMIC board meeting, attended the Bar Leadership Institute in Chicago, and she attended the joint reception with the Bryan County Bar Association.

REPORT OF THE VICE PRESIDENT

Vice President Bracken reported he attended OBA Law Day and the Military Assistance Committee meetings, worked with bar members and staff regarding planning for OBA Heroes Day, attended the Legal Desert Task Force meeting, spoke with the Tulsa County Bar Association Board of Directors about future plans for the OBA, met with the Executive Committee to discuss various OBA-related issues, attended the OCU School of Law Alumni Association Awards Gala, attended the Oklahoma County Bar Association Bench & Bar Conference, and he attended the joint reception with the Bryan County Bar Association.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the Bar Leadership Institute and National Association of Bar Executives conference in Chicago, attended the first meeting of the Legal Desert Task Force, met with a 1L student from OCU School of Law along with President Peckio regarding rural practice opportunities, met with Phillips Murrah regarding the law firm's sponsorship of speaker Herb Rubenstein's presentation at the OBA Midyear Conference, worked on her article for the April issue of the *Oklahoma Bar Journal*, attended the Chief Justice Colloquium on Civility and Ethics, met with the executive team and general counsel regarding a proposed Department of Justice regulation related to discipline, met with the three Oklahoma law school deans regarding the current state of the Law Schools Committee, attended the Western States Bar Conference, continued monitoring proposed legislation affecting the administration of justice, met with the Civil Procedure and Evidence Code Committee chair and attended the committee's April meeting, reviewed an appellate brief related to pending litigation, and she attended the joint reception with the Bryan County Bar Association.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Williams reported he virtually attended the first meeting of the OBA Legal Desert Task Force, began research for potential mentors for counties identified as legal deserts, sponsored a hole for the Tulsa County Bar Foundation charitable golf tournament, reviewed the Department of Justice proposed CFR on federal attorneys and conferred with the Executive Committee regarding the same, attended the Western

States Bar Conference, checked on status of the search for a new Professionalism Committee chair, reviewed an appellate briefing related to pending litigation and outside counsel billing, and he attended the joint reception with the Bryan County Bar Association.

BOARD MEMBER REPORTS

Governor Aspan reported she attended an ABA program titled "Disaster Response, Part 1: Undercutting FEMA and the Future of Federal Disaster Relief," attended the Professional Responsibility Commission meeting, attended the Tulsa County Bar Association Board of Directors meeting, chaired the Legal Aid Services of Oklahoma Financial Oversight Committee meeting, attended the Legal Aid Services of Oklahoma Board of Directors meeting, attended the ABA Civil Rights and Social Justice Spring Virtual Council meeting, and she attended the joint reception with the Bryan County Bar Association. **Governor Barker** reported he attended the Garfield County Bar Association meeting, worked with the Legal Desert Task Force, and reviewed the OBA Awards Committee materials and schedule for 2026. **Governor Cooper** reported he attended meetings of the Oklahoma County Bar Association Board of Directors and Executive Committee. He has also worked to finalize the construction contract related to renovations to the Oklahoma Bar Center. **Governor Dodoo** reported she attended the Bench and Bar Committee meeting, attended the Law Schools Committee executive meeting, attended the OCU School of Law **A**lumni **Association A**wards **G**ala, and she attended the joint reception with the Bryan County Bar Association. **Governor Jones** reported by email he attended a meeting of the OBA Legal Desert Task Force. **Governor Hixon** reported he attended OBA Day at the Capital presentations, attended two meetings of the OBA Civil Procedure and Evidence Code Committee, submitted a candidate profile for the Tulsa County Bar Association delegate elections, attended the TCBA Board of Directors meeting, attended the TU College of Law Hall of Fame and Gala event at Southern Hills Country Club, and he attended the joint reception with the Bryan County Bar Association. **Governor Locke** reported he attended the Lawyers Helping Lawyers Assistance Program Committee meeting and the Bryan County Bar Association joint reception. **Governor Loyall** reported she attended the Canadian County Bar Association March meeting, met with Sarah Jane Gillett regarding the Lawyers Helping Lawyers Foundation, was sworn in as the associate municipal judge for the City of Piedmont, and she attended the join reception with the Bryan County Bar Association. **Governor Norman** reported he attended the Seminole County Bar Association meeting, discussed the Seminole County Law Day golf tournament planning and sponsorship activities, attended the Access to Justice Committee meeting, and he attended the joint reception with the Bryan County Bar Association. **Governor Oldfield** reported he attended the Disaster Response and Relief Committee virtual March meeting. He also made preparations for hosting the Ask a Lawyer phone hotline in Kay County in observance of Law Day. **Governor Trevillion** reported he attended the joint reception with the Bryan County Bar Association. **Governor West** reported he attended OBA Day at the Capital, the Cleveland County Bar Association Executive Team meeting and the joint reception with the Bryan County Bar Association.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

President-Elect Knott reported the **Bench and Bar Committee** has an upcoming meeting scheduled. Vice President Bracken reported the Lawyers Helping Lawyers Assistance Program Committee is meeting regularly; he also said the **Military Assistance**

Governor Cooper reported the Bar Center Facilities Committee, in coordination with Executive Director Johnon, has now produced a signed contract, and subcontractors will now be selected so that renovation work on the Bar Center can move forward.

Committee will begin promoting its upcoming Heroes Days event with save-the-date fliers soliciting lawyer volunteers to be distributed to those answering phones during the Law Day event on May 1. Past President Williams and Executive Director Johnson reported the **Investment Committee** will begin meeting quarterly; the **Professionalism Committee** is searching for new leadership; the **Section Leaders Council** is discussing how to create partnerships and synergies between sections to use resources more effectively; and the **Strategic Planning Committee** is engaged in the implementation phase with an update to the board to be made at the May meeting. Governor Oldfield reported the **Disaster Response and Relief Committee** is meeting regularly; and the **Legal Internship Committee** is updating some of its rules and is discussing the placement of interns in tribal courts. Governor Cooper reported the **Bar Center Facilities Committee,** in coordination with Executive Director Johnon, has now produced a signed contract, and subcontractors will now be selected so that renovation work on the Bar Center can move forward. Governor Barker reported the **Awards Committee** has met and recommends no changes be made to the list of OBA Awards that will be presented during the Annual Meeting. Governor Hixon reported the **Law Day Committee** has met and is making its final preparations for the Ask A Lawyer event on May 1. Governor Locke reported the **Lawyers Helping Lawyers Assistance Program Committee** met, and he said the **Membership Engagement Committee** has an upcoming meeting scheduled. Governor Norman reported the **Access to Justice Committee** is meeting regularly and working on various relevant issues. Governor Aspan reported the Clients' Security Fund Committee has a meeting scheduled in April, and she said the **Midyear Conference Planning Committee** reports that sponsorships for the 2026 event are rolling in. Governor Dodoo reported the **Bench and Bar Committee** has hosted another "ICYMI" traveling law-related educational event southwestern Oklahoma.

COMMITTEE CONSOLIDATION

President Peckio and President-Elect Knott jointly explained that the Executive Committee has identified certain committees that are inactive and would be more effective if realigned as subcommittees under other committees or disbanded. Specific recommendations were made for the board's consideration. The board passed a motion to approve deactivating the Group Insurance Committee and recreating it as a subcommittee under the Membership Engagement/Member Services Committee. The board also passed a motion to approve sunsetting the Civil Procedure and Evidence Code Committee and recreate it as a subcommittee under the Bench and Bar Committee.

AWARDS COMMITTEE RECOMMENDATIONS

The board passed a motion to approve the OBA Awards Committee's recommendation that no changes be made to the standing list of OBA Awards in 2026.

APPOINTMENT OF SPECIAL COMMISSION TO REVIEW GRIEVANCE

The board passed a motion to approve a recommendation made by General Counsel Hendryx to appoint Melissa G. DeLacerda, Stillwater; Kimberly Hays, Tulsa; and James T. Stuart, Shawnee; to serve on a special three-member commission to review a grievance submitted against a member of the Professional Responsibility Commission in compliance with Rule 3.3(b)(2) of the Rules Governing Disciplinary Proceedings.

OBA SECTION SPONSORSHIP INQUIRY

Executive Director Johnson discussed a recently received inquiry related to a non-law-related third party's request to sponsor section activities and events. The board reviewed the association's fund-raising policy and passed a motion to approve the adoption of a policy prohibiting the acceptance of advertising or sponsorships from non-law related entities.

UPCOMING 2026 OBA AND COUNTY BAR EVENTS

President Peckio reviewed upcoming bar-related events and activities involving the Board of Governors, including upcoming Board of Governors meetings and the OBA Midyear Conference June 17-19 at the OKANA Resort in Oklahoma City.

The Oklahoma Bar Association Board of Governors met May 15.

REPORT OF THE PRESIDENT

President Peckio reported she attended and participated in the recording of promotional materials for Law Day; attended and spoke at the swearing-in ceremony for new admittees, attended the Tulsa County Bar Association/ Tulsa County Bar Foundation Law Day luncheon, attended and presented the keynote speech at the Seminole County Bar Association Law Day luncheon in Wewoka, attended the Pittsburg County Law Day dinner, participated in the Ask A Lawyer event on Law Day at the Tulsa County Bar Association, accepted the State Bar of Texas invitation to attend their Annual Meeting in June, coordinated with the Legal Desert Task Force for its second meeting, met with the Executive Committee and the Law Schools Committee officers to discuss the Law Schools Committee's aims and objectives, reviewed and approved an invoice for outside counsel work on pending 10th Circuit appeal matters, met with strategic planning consultant Marcy Cottle and Executive Director Johnson to get a status update on the Lifecycle Education analysis, met with the Executive Committee to discuss the May Board of Governors meeting, completed her monthly president's article for the May Issue of the *Oklahoma Bar Journal*, reviewed and discussed the Tulsa County Courthouse's new agreed decree docket procedures with Family Law Section CLE chair Kensey Wright, reviewed the current registration levels of the OBA Midyear Conference, and she reviewed an email message promoting the conference to be sent to all OBA members.

REPORT OF THE PRESIDENT-ELECT

President-Elect Knott reported she attended the CLE Task Force meeting looking at ways to increase revenue, coordinated with the Legal Desert Task Force members to plan for a second meeting of the task force and attended the May meeting, attended the Bench and Bar Committee meeting where planning is underway for a booth, cabana, or hospitality suite at the Midyear Conference, attended the Tulsa County Bar Association Law Day luncheon, attended the Seminole County Bar Association Law Day luncheon in Wewoka, attended the Canadian County Bar Association Law Day luncheon, attended the Oklahoma Bar Foundation meeting, met with Law Schools Committee officers to discuss the committee's aims and objectives, and she met with Lawyers Helping Lawyers Foundation Interim Executive Director Sarah Jane Gillet to discuss status updates for the foundation.

REPORT OF THE VICE PRESIDENT

Vice President Bracken reported he coordinated with the Oklahoma County Bar Association regarding Law Day events, attended the Oklahoma County Bar Association Law Day luncheon, attended the Seminole County Bar Association Law Day luncheon, attended the Pittsburg County Bar Association Law Day ceremony, had discussions with the Legal Desert Task Force, attended the Oklahoma Bar Foundation meeting and the OBF Developmental Committee meeting, met with Law Schools Committee officers to discuss the committee's aims and objectives, helped with finalizing the OBA Heroes Day promotional flier and various details of the event, and met with the Executive Committee to discuss various OBA issues.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the April Young Lawyers Division meeting, met with the Oklahoma County Bar Association executive director regarding Law Day events, met with Edward Jones representatives along with Educational Programs Director McCormick regarding vendor andsponsor options for the Midyear Conference, attended the Tulsa County Bar Association Law Day luncheon, attended the CLE Task Force meeting, attended the swearing-in ceremony for new admittees, met with Access to Justice Foundation Executive Director Katie Dilks regarding pending garnishment forms, met with auditors, met with Chief Justice Rowe to discuss 50-, 60- and 70-year pin recipients, met with Law Schools Committee officers to discuss the committee's aims and objectives, attended and presented at the Seminole County

Law Day luncheon, attended the Pittsburg County Law Day event, attended the Oklahoma County Law Day luncheon, attended the Western States Bar Conference monthly meeting of executive directors, attended the kickoff meeting for bar center entryway and roof renovation projects, met with strategic planning consultant Marcy Cottle and President Peckio to get a status update on the Lifecycle Education analysis, and she met with Lawyers Helping Lawyers Foundation Interim Executive Director Sarah Jane Gillet regarding status updates.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Williams reported he attended the April and May virtual meetings of the Membership Engagement Committee, coordinated the review and updating of a public information brochure for the Membership Engagement Committee, attended the April virtual meeting with the Law Schools Committee officers to discuss the committee's aims and objectives, attended the May virtual meeting of the OBA Executive Committee to discuss updated garnishment forms to be published by the OBA, reviewed and approved an invoice for outside counsel work on pending 10th Circuit appeal matters, and he participated in Legal Desert Task Force discussions with rural attorneys regarding mentoring possibilities.

BOARD MEMBER REPORTS

Governor Aspan reported by email she participated in the Professional Responsibility Commission April meeting, and she participated in the ABA Standing Committee on Disaster Response and Preparedness meeting. **Governor Barker** reported he attended the Oklahoma Municipal Judges Association Spring Conference. **Governor Cooper** reported he attended the Oklahoma County Board of Directors and Executive Committee meetings, and he attended the kickoff meeting of the bar facilities project. **Governor Dodoo** reported she attended the OBA Bench and Bar Committee meeting. **Governor Hixon** reported he attended the Tulsa County Bar Association Board of Directors meeting, exchanged communications with Katie Dilks regarding potential resources for development of legal forms, attended the Tulsa County Bar Association/Tulsa County Bar Foundation Law Day luncheon, and he exchanged communications and met (virtually) with John Williamson of Smith Carney regarding commencement of the OBA audit. **Governor Locke** reported he attended the Membership Engagement Committee May meeting. **Governor Loyall** reported she attended the Oklahoma Municipal Judges Association Spring Conference and the Canadian County Law Day luncheon. **Governor Norman** reported he attended the Seminole County Bar Association Law Day CLE and golf tournament. **Governor Oldfield** reported he attended and judged a Law Day speech contest at Ponca City High School and volunteered to answer calls during the Kay County Ask A Lawyer event. **Governor Trevillion** reported he attended the Membership Engagement Committee meeting. **Governor West** reported he attended the Cleveland County Bar Association Executive Board meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Gage reported the YLD recently participated in the ABA YLD spring conference in San Diego. The OBA YLD is working to fill six leadership vacancies. She reports planning is underway for the next Wills for Heroes event, and the division is preparing for its semi-annual Bar Exam Survival Kit assembly event. She also said the division is planning YLD activities during the upcoming Midyear Conference. Governor Gage recently met with Executive Director Johnson to discuss award nominations and filling open board positions.

REPORT OF THE GENERAL COUNSEL

A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

Vice President Bracken reported the **Military Assistance Committee** is meeting regularly and preparing for the planned Heroes Day event in November. A Wills for Heroes event in McAlester is being planned for July in conjunction with the YLD. Past President Williams reported the **Professionalism Committee** is seeking a chairperson. Governor Oldfield reported the **Disaster Response and Relief Committee** has been meeting regularly. Governor Cooper said the **Bar Center Facilities Committee** is determining workflow for multiple planned repair and renovation projects with roof repairs to be prioritized. Governor Barker said the **Awards Committee** is accepting nominations for 2026 OBA Awards as the call-for-entries period is officially underway, and a marketing plan to publicize the request for nominations is being executed in May and June with a deadline of June 30 for nominations to be accepted. Governor Norman said the **Access to Justice Committee** has garnishment forms in work.

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

Executive Director Johnson explained the process of suspension and strike orders, advising that notice to show cause is mailed, followed by diligent efforts to contact each person on the list before the application is filed with the court. The board passed a motion to approve the application to suspend for failure to pay 2026 dues, the application to suspend for failure to comply with 2025 MCLE requirements, the application to strike for failure to reinstate after suspension for non-payment of 2025 dues, and the application to strike for failure to reinstate after suspension for non-compliance with 2024 MCLE requirements.

AMENDMENT OF THE LICENSE AGREEMENT BETWEEN THE OBA AND FASTCASE/CLIO

Management Assistance Program Director Julie Bays explained the proposed amendments related to company ownership and termination time. The board passed a motion to approve the amendments.

PRESIDENT PECKIO'S APPOINTMENTS

The board passed motions to approve the following appointments:

- Oklahoma Child Death Review Board: President Peckio appoints Sara Wray, Norman, to complete the unexpired term of Susan Damron, Oklahoma City, with a term expiring Dec. 31, 2027.
- Professional Responsibility Commission (PRC): President Peckio appoints Timothy Lyle Olsen, Oklahoma City, to complete the unexpired term of Matthew Beese, Muskogee, with a term expiring Dec. 31, 2026.

UPCOMING 2026 OBA AND COUNTY BAR EVENTS

President Peckio reviewed upcoming bar-related events and activities involving the Board of Governors, including upcoming Board of Governors meetings and the OBA Midyear Conference set for June 17-19 at the OKANA Resort in Oklahoma City; the Sheep Creek dinner set for June 24 in Pontotoc County; the July virtual Board of Governors meeting; and the Oklahoma Bar Foundation 80th anniversary gala set for Sept. 18 in Oklahoma City.

> Vice President Bracken reported the Military Assistance Committee is meeting regularly and preparing for the planned Heroes Day event in November. A Wills for Heroes event in McAlester is being planned for July in conjunction with the YLD.

The Oklahoma Bar Association Board of Governors met June 17.

REPORT OF THE PRESIDENT

President Peckio reported she attended the May YLD meeting and the Legal Desert Task Force Meeting, met with the OBA's strategic planning consultant to work on lifecycle methodology, approved invoices for technology upgrades and OBA legal expenses, continued working on presidential appointments, attended the Tulsa County Bar Association softball game, attended the State Bar Of Texas Annual Meeting and swearing-in of State Bar President G. David Smith, sent out an email reminding all OBA Members of the June 30 OBA Awards nomination deadline, and she attended the Executive Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Knott reported she attended the CLE Task Force meeting, met with OBA staff to discuss the CLE Department's 2027 budget, attended the Legal Desert Task Force meeting, met with the Lawyers Helping Lawyers Foundation executive director regarding a grant

President Amber Peckio and President-Elect Jana Knott presented an update from the working group formed to evaluate underperforming committees to see if they should be consolidated or sunsetted.

proposal, attended the Canadian County Bar Association meeting, spoke about the OBA at the Yukon Rotary Club, attended the OAMIC board dinner and quarterly meeting, met with the YLD chair-elect regarding the YLD, and she attended the meeting for the Midyear Conference panel speakers.

REPORT OF THE VICE PRESIDENT

Vice President Bracken reported by email he attended the Oklahoma Bar Foundation board meeting, the OBF Developmental Committee meeting, and he spoke with various attorneys about the upcoming OBF 80th anniversary gala. He also worked on details for the OBA Heroes Day event planned for Nov. 11.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she met with President-Elect Knott and staff to discuss the 2027 CLE budget, attended the May YLD meeting, attended the CLE Movie Night, attended the Legal Desert Task Force meeting, met with the OBA's strategic planning consultant to work on next steps for lifecycle methodology analysis, met with the Tennessee State Bar executive director to discuss member benefits, attended the CLE Task Force meeting, met with Vice Chief Justice Kuehn to discuss potential CLE programming, worked on 50-year anniversary pinning logistics, attended the Western States Bar Association monthly meeting of executive directors, attended the Oklahoma Bar Journal Board of Editors dinner and its June meeting, met with staff regarding the status of association management software upgrades, met with representatives from Clio to discuss new member benefit offerings, worked on the Midyear Conference attendee questionnaire with the OBA MAP and CLE departments, and she met with architectural team on survey status and upcoming roadmaps.

REPORT OF THE PAST PRESIDENT

Past President Williams reported he reviewed the virtual meeting of the Legal Desert Task Force and attended the virtual meeting of the Legal Desert Task Force Retention and Practice Support Subcommittee. He reviewed and approved outside legal counsel invoices regarding pending litigation and attended the Executive Committee meeting.

BOARD MEMBER REPORTS

Governor Aspan reported she attended the Tulsa County Bar Association Board of Directors meeting, the OBA Legal Desert Task Force meeting, the May Professional Responsibility Commission meeting, and she responded to multiple emailed employment law questions received on Law Day per President Peckio's request for volunteers. **Governor Barker** reported he attended the Legal Desert Task Force meeting, and he contacted assigned county bar associations regarding OBA Award nominations. **Governor Cooper** reported he worked on Oklahoma County Bar Association matters and Bar Center Facilities Committee matters with the architectural team. He reports site observation related to planned renovation projects is underway at the Bar Center. **Governor Jones** reported he attended the Legal Desert Task Force meeting as well as its Retention and Practice Support Subcommittee meeting, and he spoke with several local attorneys and non-attorneys regarding these issues. He also attended the Technology Committee meeting and accepted his appointment to the Budget Committee. **Governor Hixon** reported he attended the Tulsa County Bar Association Board of Directors meeting. He also spoke with a District 6 constituent regarding bar admission issues. **Governor Loyall** reported she attended the Canadian County Bar Association May meeting. Governor West reported he attended the funeral service for attorney and bar leader Dave Stockwell.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Gage reported she attended the OBA YLD May meeting as well as the reception for new admittees at the Dust Bowl in Tulsa in May. She also reports discussions with the Animal Law Section regarding partnering on future events and meetings.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

Governor Cooper reported the **Bar Center Facilities Committee** is working on site observation to support the upcoming renovation projects. Governor Barker reported the **Awards Committee** will be meeting in August to review OBA Award nominations as the deadline for submitting entries is approaching. Governor Dodoo reported by email the **Bench and Bar Committee** is hosting a lounge during the Midyear Conference where attendees are encouraged to stop by during programming breaks to learn more about joining the Bench and Bar Committee. She also discussed the committee's "ICYMI" traveling CLE series in partnership with the Oklahoma Access to Justice Foundation, providing education to local area lawyers about the new eviction forms, plain language as a tool for communicating with pro se litigants, and best practices for distributing legal information to court staff. She said the next CLE will take place in Enid on June 24.

COMMITTEE CONSOLIDATION UPDATE

President Amber Peckio and President-Elect Jana Knott presented an update from the working group formed to evaluate underperforming committees to see if they should be consolidated or sunsetted. The working group has been formed with Governor Loyall as chair. The Executive Committee is discussing the development of a new set of aims and objectives for the Law Schools Committee.

CLE ANNUAL REPORT

Director of Educational Programs Gigi McCormick reported that currently about 89% of programs sold are presented either online or in a live webcast format. Gross sales of approximately $749,000 are projected for 2026, and a written report was submitted presenting an overview of financial comparisons with previous years as well as future goals for the OBA CLE Department.

CLE TASK FORCE UPDATE

The board passed a motion to approve the following recommendations proposed by the task force with a start date of Sept. 15, 2026: 1) Pivoting from the current model of administrative services and co-sponsorship to the implementation of a bundle model that is based on the cost of attending the program; and 2) raising the average hourly cost for CLE programs from $50 per hour to $60 per hour.

IT STRATEGIC PLAN REPORT

IT Director Robbin Watson described the progress that has been made in providing more efficient and effective technology for both staff and members to power the association, and she reported on the project status of the soon-to-be-live new and improved OBA public website that will be more user-friendly and searchable for the public. She also provided an overview and status update related to other recent and soon-to-be implemented technology upgrades and investments. She additionally described recent measures taken to strengthen the association's technology security posture to better protect its systems and data.

GARNISHMENT FORMS

The board passed a motion to approve publication of the forms developed by the Access to Justice Committee Forms Subcommittee, as presented by Access to Justice Foundation Executive Director Katie Dilks, who described the process of developing the proposed new forms and the efforts made to engage stakeholders as they were being developed.

PRESIDENT PECKIO'S APPOINTMENTS

The board passed a motion to approve the following appointments:

- Professional Responsibility Tribunal (PRT): President Peckio reappoints Anne Sickles Maguire, Tulsa, and Martha Rupp Carter, Tulsa, as members with terms beginning July 1, 2026, and expiring June 30, 2029. President Peckio appoints Stephanie Renae Jackson, Tulsa, as a member with a term beginning July 1, 2026, and expiring June 30, 2029.

- Legal Aid Services of Oklahoma Board of Directors: President Peckio appoints Retired Judge Jequita Napoli, Norman, to a term expiring Dec. 31, 2028.
- Oklahoma Commission on Children and Youth Appointment: President Peckio proposes to submit the following three names to Gov. Stitt as suggestions for appointment: Dr. Kathy LaFortune, Tulsa; J. Michael Miller, McAlester; and Holly Iker, Norman.
- Domestic Violence Review Board: President Peckio proposes to submit the following three names to the Oklahoma Attorney General as suggestions for appointment from July 2026 to June 2028: Laurence Stephen Balcerak, Pauls Valley; Kara Nikole Bacon, Durant; and Gloria Gail Stricklin, Oklahoma City.

PRESIDENT PECKIO'S APPOINTMENTS

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

- Standing Committee on Professionalism: President Peckio appoints Fred Leibrock, Oklahoma City, as chairperson with a term expiring Dec. 31, 2026.

COUNCIL ON JUDICIAL COMPLAINTS LEASE

Executive Director Janet Johnson explained the year-to-year lease is due to expire July 1 and will be re-executed by the Office of the Executive Director.

HEROES DAY PLANS

Military Assistance Committee Vice Chairperson John Cannon discussed the committee's plans for the upcoming event to assist veterans and service members with their legal needs. He explained the upcoming Heroes Day planned for Nov. 11, described the timeline for promoting and publicizing the event and asked the Board of Governors to volunteer to assist.

UPCOMING 2026 OBA AND COUNTY BAR EVENTS

President Peckio reviewed upcoming bar-related events and activities involving the Board of Governors, including the Sheep Creek dinner set for June 24 in Pontotoc County; the July and August virtual Board of Governors meetings; the Oklahoma Bar Foundation 80th anniversary gala set for Sept. 18 in Oklahoma City; and the OBA Annual Meeting, set for Nov. 11-13 in Oklahoma City.

NEXT BOARD MEETING

The Board of Governors met in July, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held virtually on Friday, Aug. 21.

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- Partnership allocations or structure
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- Tax credit PWA requirements
- Tax credit recapture due to abandonment (e.g., hailstorm) or leakage (CCUS)

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Expanding Access to Justice Through OBF's Court Interpreter Support

By Renee DeMoss

In the legal system, language accuracy is a matter of justice. For individuals who are considered limited English proficiency (LEP), access to justice depends on their ability to understand a language through a qualified interpreter:

> "Many persons who come before the court are partially or completely excluded from full participation in the proceedings due to limited English proficiency … it is essential that the resulting communication barrier be removed as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier."[1]

The new $500,000 OBF grant program addresses the shortage of qualified interpreters in Oklahoma. The program is designed to:

- Support the OBF's strategic priority to expand access to justice for underserved populations
- Advance equitable court participation for individuals with limited English proficiency (LEP)

The program directly addresses:

- Interpreter certification and training costs
- Workforce development for interpreters
- Skill-building for current professionals

The purpose of a courtroom interpreter is to help LEP individuals communicate and understand the proceedings in a judicial environment. This role involves more than just translating court proceedings word for word. It also includes depicting the meaning, tone, and style of the speaker while remaining impartial. Qualified interpreters play a pivotal role in ensuring access to justice and helping court proceedings function efficiently and effectively.

In Oklahoma, two levels of courtroom interpreter credentials are recognized. "Certified courtroom interpreters" hold the highest level of credential, and "registered courtroom interpreters" hold the second highest level of credential. An interpreter candidate must first pass the test to become registered, and then he or she may take the exam to become fully certified.

Certified courtroom interpreters have established the interpreter's competence as a language professional, evidencing the ability to interpret complex legal proceedings with precision and neutrality, even in high pressure situations. A registered interpreter knows both languages fluently, but a certified interpreter has been specifically tested in live interpreting. Oklahoma statutes require a district court to first determine that a certified interpreter is not available before using a registered interpreter.[2]

The interpreter exams are both challenging, but the certified exam is particularly so, even for individuals who are extremely proficient in both languages. An interpreter is required to listen, comprehend, translate, and produce the interpretation with speed and accuracy, including legal terms, common slang terms, and others. Poor or inaccurate interpretation can have devastating consequences, as in a New Mexico case where the defendant was convicted of rape and murder largely due to a denial that was misinterpreted as a confession.[3]

Access to qualified court interpreters, particularly in rural Oklahoma, is a persistent challenge. As of May 1, there are only 30 certified interpreters on the Oklahoma registry of interpreters maintained by the Board of Examiners of Certified Court Interpreters, and only nine of those 30 individuals who are certified actually reside in Oklahoma.

Financial barriers are another part of the problem. Costs for registered interpreters to take the certification exam preclude many who seek to serve and advance in their careers by becoming certified interpreters. Similarly, many individuals lack the financial resources to train for the exams. Potential interpreters lack the opportunity to successfully take the registered exam.

Therefore, the OBF has created a new $500,000 grant program to address the shortage of qualified interpreters in Oklahoma and to support the professional development of court interpreters across the state. The program is intended to 1) improve access to justice for LEP individuals, 2) reduce financial barriers for registered interpreters taking the exam to become certified interpreters, 3) provide a way for eligible certified interpreters to sharpen the skills necessary to successfully pass the exam, and 4) reduce financial barriers for individuals who desire to take the exam to become registered interpreters.

LEP individuals must have meaningful access to the courts. This requires highly trained certified courtroom interpreters who have proven abilities. Competent legal interpretation is a fundamental safeguard of justice, due process, and fairness in the courtroom, and the OBF program will promote these goals through its new grant program.

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

ENDNOTES

1. Preamble to the Code of Professional Responsibility for Interpreters, Rule 1, Title 20, Chap. 23, App. 1.

20. 20 Okla. Stat. 1710 (2025)

3. *Mendez v. State of Arkansas*, CR10-1241,2011 WL 6275689 (Ark., Dec. 15, 2011)

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Chris, co-chair of the firm's Mediation/ADR practice, represents businesses and individuals in Oklahoma state and federal courts, leading high-stakes corporate tort and IP litigation. An accomplished litigator and mediator, he has tried dozens of jury cases and successfully managed hundreds of mediations. As Oklahoma's only active paraplegic trial attorney, Chris is widely respected for his courtroom presence and was inducted into the American College of Trial Lawyers in 2023.

What Legal Leaders Say about Chris:

"I have mediated a number of cases with Chris, and I have always found him to be well prepared and willing to work hard to get cases resolved. Chris brings a wealth of knowledge and experience to the mediation table, along with natural empathy, insight and a high level of professionalism."

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Are You Ready? Serve Your Profession as a YLD Leader

By Laura Talbert, Immediate Past Chair, Young Lawyers Division

IF YOU HAVE A HEART FOR service, the ambition to lead, and a desire to get more involved in your community and the legal profession, now is the time. Are you ready?

As fall rolls around, and with the Annual Meeting quickly approaching, the OBA Young Lawyers Division is looking for our next group of board members to lead the division. The YLD plays a critical service-oriented role in the OBA – a few current YLD initiatives include the Wills for Heroes program, Kick it Forward, and the Bar Exam Survival Kits, among many others.

Every year, the YLD elects a new Board of Directors, made up of early-career volunteer attorneys from across the state. The YLD Board of Directors guides the division's initiatives, effectively carrying on current programs as well as coming up with new program ideas and implementing them. More importantly, board members serve as representatives for their districts, making sure young lawyers across Oklahoma are heard.

When you run for one of the open board positions, you can make a meaningful impact on your district, the YLD, and the state as a whole. The YLD serves communities across Oklahoma, volunteering for individuals in need. You are already a member of the YLD if you were first admitted to the practice of law 10 years ago or fewer and are in good standing.

Young Lawyers Division members gather to host a Wills for Heroes event at the Puterbaugh Center in McAlester in July. The OBA YLD oversees this service program that provides free wills to emergency personnel in Oklahoma. From left: Alexandra "Allie" Gage, Tulsa; Breanne Gordon, Shawnee; Chloe Moyer, Durant; Brian Goodpasture, Oklahoma City; Randy Gordon, Shawnee; Clayton Baker, Jay; Alexander Smithley, Enid; and Liz Stevens, Norman.

And if you're not ready for a leadership role, encourage a colleague to fill out a nominating petition. And make sure you keep an eye out for volunteer opportunities – there is a volunteer position open and waiting for you!

The list of vacancies for 2027 is on the next page. Nominating petitions will be accepted through Aug. 14. Those offices that are contested will be set for voting, and ballots will be sent by email. Those offices that are not contested will be deemed elected by acclamation.

NOMINATING PROCEDURE

Article 5 of the division bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA YLD and must be submitted by **Friday, Aug. 14, 2026, at 5 p.m.** A sample nominating petition is available at www.okbar.org/yld/elections. 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.

ELIGIBILITY

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA YLD. Membership is automatic – if you were first admitted to the practice of law in 2016 or later, you are a member of the OBA YLD!

ELECTION PROCEDURE

Article 5 of the division bylaws governs the election procedure. In September, a list of all eligible candidates will be published in the *Oklahoma Bar Journal*. Ballots will be emailed around Oct. 1 to all YLD members at the email address in the official OBA roster. All members of the division may vote for officers and at-large directorships. Only those members with OBA roster addresses within a subject judicial district may vote for that district's director. The members of the Nominating Committee shall only vote in the event of a tie. Please see 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 lrtalbert@gmail.com no later than 5 p.m. Friday, Aug. 14, 2026. Results of the election will be announced at the YLD meeting at the OBA Annual Meeting Nov. 11-13 at the Skirvin Hotel in Oklahoma City.

ABOUT THE AUTHOR

Ms. Talbert is the deputy chief of staff and special counsel for Oklahoma Human Services. She has served on the YLD board for eight years and is the current immediate past chair.

2027 YLD BOARD VACANCIES

OFFICERS

Officer positions serve a one-year term.

Chairperson-Elect: Any member of the division who has previously served for at least one year on the OBA YLD Board of Directors. The chairperson-elect automatically becomes the chairperson of the division for 2028.

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

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

BOARD OF DIRECTORS

Board of Directors positions serve a two-year term.

District 3: Oklahoma County (one seat)

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

District 6: Tulsa County (two seats)

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

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

District 9: Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Tillman counties

At-Large: All counties (two seats)

At-Large Rural: All counties except Oklahoma and Tulsa (one seat)

ON THE MOVE

Daisy Eklund has joined the Tulsa office of Hall Estill. She practices primarily in the areas of family law, guardianship, and trust and estate litigation. She received her J.D. with highest honors from the TU College of Law, where she served as the symposium editor for the *Tulsa Law Review*. In addition, she interned with a local private equity firm and the U.S. Army Judge Advocate General's Corps. She also served as an extern for Oral Roberts University Athletics and participated in the Buck Colbert Franklin Legal Clinic, providing pro bono legal assistance to individuals in north Tulsa with domestic and property law issues. Prior to joining Hall Estill, Ms. Eklund was a family law associate at a major Tulsa law firm.

Benton Wheatley has joined the Austin office of Maynard Nexsen as a shareholder in its construction practice. Mr. Wheatley practice focuses on construction and engineering disputes and transactions, fiduciary responsibilities in private equity investments in the construction process and advising REITs and private equity firms on purchaser rights, in relation to problem construction projects. He received his J.D. from the OU College of Law. He regularly handles complex matters involving delay and impact claims, defective design and construction disputes, differing site conditions, fiduciary duty issues and project workouts through mediation, litigation and arbitration. He also advises clients on mitigating risk in passive limited partnership investments related to construction projects and engineering contracts. Prior to joining Maynard Nexsen, Mr. Wheatley was a partner at an international fullservice law firm, where he managed a broad range of sophisticated disputes and transactions. Earlier in his career, he served as assistant general counsel for a large international architectural and engineering firm, advising on project delivery issues across all 50 U.S. states, as well as in Mexico, Venezuela, Bolivia, Brazil and Argentina.

Kelly Kinser and **Kimberly Marchant** have launched Kinser Marchant PLLC, a women-owned business law firm based in Oklahoma City. Their experience includes the areas of employment, corporate governance, real estate, commercial contracts and transactional services. Kinser Marchant serves clients across a variety of industries and works with business owners at all stages of growth, from formation through expansion and transition. The firm is based in Oklahoma City and is now accepting new clients.

Ryan Silva has joined the law firm of Pray Walker in its litigation practice. He serves as a litigation associate attorney, focusing his practice on litigation and insurance law. Mr. Silva received his J.D. from the TU College of Law, where he served as an articles editor for the *Tulsa Law Review* and was selected as lead brief writer for the Health Law Moot Court, competing in national competitions focused on healthcare law and appellate advocacy. During law school, Mr. Silva received five CALI Awards, honors recognizing the highest grade in a course and was named to the faculty honor roll each semester. He was also recognized with the George and Jean Price Award for Outstanding Legal Writing Students, honoring his performance in legal writing, analysis, and reasoning.

Chancy T. Schaaf has joined the Tulsa law firm of Gladd, Maguire, Allen Brown & Wakeman as an associate. She practices civil litigation. She received her J.D. with highest honors from the TU College of Law in 2025. In law school, she was awarded the CALI Award for water law and served as an executive editor for the American Bar Association's Section of Environment, Energy and Resources *Year-In-Review* publication. She was subsequently awarded the *Energy Law Journal*'s Outstanding ABA YIR Award for her contributions. Additionally, Ms. Schaaf was chosen from a competitive pool of candidates to serve as a fellow in the Rural Summer Legal Corps with the Legal Services Corporation. She was stationed in the Rio Grande Valley where she provided free legal services to the community for 10 weeks.

Robin M. Meyer has joined the Oklahoma City office McAfee & Taft, where she focuses her practice on all facets of technology law and transactions, including cybersecurity, AI governance, data privacy, digital responsibility, technology products and services, vendor management and government procurement.

Barbara M. Moschovidis has joined the Tulsa office at McAfee & Taft, where her practice is concentrated in the areas of complex business and commercial litigation, the resolution of energy-related disputes and first-party insurance defense. She received her J.D. with honors from the OU College of Law in 2012.

Rachal A. Lisle has joined McAfee & Taft as a senior associate in its Oklahoma City office. Her state and federal trial practice encompasses the areas of product liability defense, contract disputes and complex business and commercial litigation.

Elaine R. Turner has been elected to Hall Estill's executive committee for the fourth time. She began her legal career with Hall Estill in 1989 and focuses her practice in labor and employment law. Throughout her career, she has successfully defended employers in employment litigation and administrative proceedings and regularly counsels employers on a wide range of employment law matters. Ms. Turner is a senior member of the firm's Board of Directors, and she has earned numerous professional honors. She is a graduate of Leadership OKC and deeply involved in the community through her longtime volunteer leadership with Special Olympics Oklahoma.

Taylor Newcomb Damaska has been appointed as the director of Helton Law Firm's Estate Planning Department. She leads the firm's estate planning practice, which helps Oklahoma families, individuals and business owners create customized plans to protect their futures. Ms. Damaska focuses her practice on comprehensive estate planning, assisting clients with wills, trusts, powers of attorney, business succession planning and asset protection strategies. She began her professional career in journalism, spending five years as an anchor, producer, reporter, and photojournalist. Ms. Damaska later received her J.D. with highest honors from the TU College of Law. While in law school, she received four CALI Excellence for the Future Awards and served as president of the Women's Law Caucus and Director of the Board of Advocates. She was also inducted into the Order of the Barristers, a national honor recognizing exceptional achievement in trial advocacy, oral advocacy, and legal writing.

Reid Rogez has joined the firm of Sherwood & Robert as an associate attorney. Mr. Rogez received his J.D. from the OU College of Law. He focuses his practice on litigation across a range of areas, including business transactions, personal injury, real estate condemnation, guardianships and criminal defense. During law school, Mr. Rogez completed a judicial externship with now-Kentucky Supreme Court Justice Angela McCormick Bisig during her tenure as chief district judge in Jefferson County, Kentucky. He also volunteered with the Kentucky Innocence Project. Mr. Rogez began his legal career as a trial attorney with the Tulsa County Public Defender's Office, where he handled both felony and misdemeanor cases. He now brings that courtroom experience and practical litigation background to a broad range of civil matters at Sherwood & Robert.

Philippa V. Ellis has joined Securitas Security Services as senior vice president and head of litigation in North America. Ms. Philippa is responsible for litigation across all North America Securitas companies. She received her J.D. from the OU College of Law in 1988 and practiced law in Oklahoma City before relocating to Atlanta, Georgia.

Hilary H. Wise has joined the Oklahoma City office of McAfee & Taft, where she devotes her practice to counseling and representing employers and management in all aspects of labor and employment law and litigation. She received her J.D. from the OU College of Law in 2022. Ms. Wise also holds the distinction of being a certified professional (SHRM-CP) through the Society for Human Resources Management.

Robert Kraft has joined the Oklahoma City office of Hall Estill as an associate. He practices primarily in the areas of corporate and business services, as well as banking and financial services. He received his J.D. from the OCU School of Law. Prior to joining Hall Estill, Mr. Kraft served as a contract specialist with L3Harris Technologies.

ON THE MOVE

Motahareh H. Nickel has joined the Oklahoma City office of GableGotwals as of counsel. Her practice focuses on general corporate transactions, mergers and acquisitions, corporate finance, commercial agreements, real estate and regulatory matters, with experience across a broad range of industries, including energy and aviation. Prior to rejoining the firm, Ms. Motahareh served as corporate counsel for a large company headquartered in Oklahoma City with operations throughout the U.S., where she advised a diverse portfolio of business units and supported corporate development initiatives, including acquisitions, divestitures and strategic partnerships. She also supported operations, fleet and finance functions through the negotiation of commercial agreements and the delivery of strategic day-to-day business counsel.

James F. Lea III and **David G. Woodral** have joined McAfee & Taft in the intellectual property practice. Together, they bring 55 years of combined experience exclusively in the field of intellectual property law to the firm. Mr. Lea received his J.D. from the OU College of Law. Mr. Woodral received his J.D. from the Washington University School of Law in St. Louis.

Maddison Bacon has joined the Oklahoma City office of Bressler, Amery & Ross PC as an associate. She practices in the Financial Institutions Group. Ms. Bacon received her J.D. from the OU College of Law.

Erin J. Rooney has joined Ryan Whaley. His practice focuses on helping injured Oklahomans and handling complex corporate litigation. When not serving his clients, Mr. Rooney serves on the board of the Piedmont Public Schools Education Foundation. He received his J.D. from the OU College of Law in 2012.

KUDOS

Retired Judge Jodi B. Levine was awarded the Burnham "Hod" Greeley Award at the ABA Annual Meeting in Chicago, Illinois, in August. She is the first Oklahoman to receive this honor. The award honors the late Hawaii attorney Burnham "Hod" Greeley, a dedicated leader within the ABA who was committed to promoting public trust and confidence in our justice system. It is presented to any individual or organization who has made a significant, positive impact on public understanding of the role of the judiciary in a democratic society and its importance to the rule of law. The award recognizes extraordinary outreach efforts designed to enhance public awareness of the need for a fair and impartial judiciary.

HOW TO PLACE AN ANNOUNCEMENT:

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

Submit news items to:

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

Articles for the September issue must be received by August 1.

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SAVE THE DATE FOR THIS YEAR'S ANNUAL MEETING NOV. 11-13

CONTACT GIGI MCCORMICK AT GIGIM@OKBAR.ORG FOR MORE INFORMATION
ON SPONSORSHIPS FOR THE 2026 OBA ANNUAL MEETING

In Memoriam

Douglas Reese Allen of Norman died March 24. He was born June 2, 1954, in New York City. He graduated from Norman High School in 1972 and attended OU, where he was a member of the OU Men's Basketball team for the 1973/1974 season. Mr. Allen graduated with a bachelor's degree in political science from OU in 1976 and received his J.D. from the OCU School of Law in 1980. In 1980, he opened his private law practice, where he dedicated 45 years to serving his clients. He was a longtime member of the South Oklahoma City Rotary Club, where he served as president. Additionally, he served 12 years on the Wesley Foundation Board, eventually serving as its president.

Wayne Morris Boettcher of Muskogee died Aug. 3, 2025. He was born Feb. 28, 1957, in Pittsburg, Philadelphia. **He served his country as a member of the U.S. Air Force from 1976-1980**. After his military service, he completed his undergraduate degree and received his J.D. from the OU College of Law. Mr. Boettcher practiced law while establishing roots in Muskogee, where he lived for approximately 30 years. He worked as a supervisor at the Department of Veterans Affairs, advocating for education benefits.

Barry Wayne Brandon of Beggs died Dec. 26, 2025. He was born Jan. 17, 1961. He received his J.D. from the University of Washington School of Law in 1987. For more than three decades, his work focused on federal Indian law, tribal governance and economic development in Indian Country. Mr. Brandon served in senior roles across federal government, private practice, consulting and tribal enterprise. He worked with the U.S. Department of Justice and the U.S. Department of the Interior on complex matters involving treaty rights, water rights settlements and the federal trust responsibility to Native American tribes. He later became a partner at a national law firm, where he was a founding member of its American Indian law and policy practice. In that role, he advised Indian Nations, tribal enterprises and public entities on legal, regulatory and policy matters. He went on to lead his own consulting firm, continuing to provide legal counsel to tribes and organizations working throughout Indian Country. A significant chapter of Mr. Brandon's career was his work with the Seneca Nation of Indians. As senior vice president and general counsel of the Seneca Gaming Corporation, he played a central role in the legal and regulatory efforts that helped establish and grow the Nation's gaming operations. The Seneca Gaming Corporation has continued to expand and has had a significant and positive impact on the economy of western New York.

David W. Buxton of Oklahoma City died Nov. 5, 2025. He was born Feb. 23, 1937, in Wichita, Kansas. He graduated from East High School in 1954 and graduated from the University of Kansas, where he was a member of the Lambda Chi Alpha Fraternity, in 1958 with a bachelor's degree in business. Mr. Buxton received his J.D. from the University of Kansas School of Law in 1961 and was a member of the *Kansas Law Review.* He was hired out of law school by the Wichita, Kansas, firm of Fleeson, Gooing, Coulson & Kitch, where he was engaged in general civil practice. He subsequently became a partner, then left the firm after 13 years to serve his church as executive administrator in a challenging period of their growth. Following seven years and upon completion of his goals with the church, he accepted a position in the legal department of Mustang Fuel Corporation in Oklahoma City. OG&E acquired the gas portion of the company from Mustang Fuel and Mr. Buxton moved into management where he ultimately became president of the gas marketing subsidiary, Enogex.

Von Russell Creel died July 7. He was born March 9, 1942, in Ardmore. Mr. Creel graduated from Midwest City High School in 1960. He graduated with his bachelor's degree with distinction from OU in 1964 with a major in history. He was a member of the debate team and in the Phi Alpha Theta (history) Pi Sigma Alpha (political science) and Delta Sigma Rho (speech) honor societies. He received his J.D. from the OU College of Law in 1968. During law school, he was a member of the *Oklahoma Law Review* and was elected to the Order of the Coif. After graduating, he served as law clerk for Chief Judge Alfred P. Murrah of the U.S. Court of Appeals for the 10th Circuit from 1969-1971. He joined the faculty of the OCU School of Law in 1971 and remained a member of the faculty until his retirement in 2011 after 40 years as a faculty member, having taken a leave of absence from the law school in 1975-1977 to serve as chief of staff for Gov. David Boren. After teaching a wide variety as a junior faculty member, he taught civil procedure, conflict of laws, American legal history and a seminar in Oklahoma legal history for more than two decades. He received the first Outstanding Faculty Assistance Award from the *Oklahoma City University Law Review*, and he was selected by the Student Bar Association and by the Merit Scholars as the Professor of the Year numerous times. For more than two decades, he was also of council with the Oklahoma City law firms of Linn, Helms, Kirk and Burkett; Linn and Helms; and Linn and Neville. He also wrote many articles and books on Oklahoma legal political history, including biographies of Judge Murrah and U.S. Rep. Lyle Boren.

James Sullivan Daniel of Tulsa died July 18, 2025. He was born Aug. 2, 1965, in Minden, Louisiana. He attended the University of Arkansas in Fayetteville, where he was a member of Pi Kappa Alpha. He received his J.D. from the TU College of Law and worked as a trial attorney for 25 years.

Teena Pat Dunn of Oklahoma City died March 25. She was born Jan. 29, 1959, in Oklahoma City. She graduated from Midwest City High School in 1977 and from the University of Central Oklahoma with a bachelor's degree in 1980. She received her J.D. from the OCU School of Law in 1994. Ms. Dunn began her legal career at Lytle, Soule & Curlee, where she eventually focused on aviation law. In 1999, she joined the Aviation Group at McAfee & Taft, where she practiced until her retirement in 2022.

Susan Kathleen Ehlen of Tulsa died Jan. 20. She was born Feb. 27, 1950, in Sioux Falls, South Dakota. She graduated from OU with a bachelor's degree in elementary education. While working, Ms. Ehlen attended night school and graduated with a master's degree in educational administration. She became Academy Central's assistant principal, breaking barriers as one of the first women in the state to hold this title. Once again, she went back to school at night while working full time and received her J.D. from the TU College of Law. In 1985, she went to work for the Dept. of the Interior in the Office of the Field Solicitor in Tulsa. Many of those years were spent representing the Bureau of Indian Affairs for issues involving tribal lands and individually owned inherited Indian lands.

Carrie Rose Griffith of Watts died May 28. She was born Dec. 31, 1958, in Siloam Springs, Arkansas. Ms. Griffith received her J.D. from the University of Arkansas School of Law in 1992. She began practicing law in 1992, alongside teaching special education in the Siloam Springs School District before her retirement in 2017. Ms. Griffith resumed her law practice at Elrod Law Firm in Siloam Springs.

Joseph Wharton Harris of Tulsa died July 2. He was born on March 18, 1951, in Los Angeles, California. He grew up in a U.S. Air Force family, completing high school at the Culver Military Academy in Indiana. He majored in music at Southern Methodist University and spent eight years as a professional musician in New York City. He relocated to El Paso, Texas, working as a private investigator for a lawyer while earning a master's degree in flute performance at the University of Texas at El Paso. He received his J.D. from the TU College of Law in 1996. As a solo practitioner, he focused on family and criminal law.

Mead John Hedglon III of Oakwood, Ohio, died Jan. 24. He was born Nov. 19, 1943, in Syracuse, New York. He received his J.D. from the Syracuse University College of Law in 1967.

James Forrest Howell of Midwest City died April 14. He was born July 14, 1934, in Wewoka. He played basketball and football at Wewoka High School and attended Eastern A&M College on a basketball scholarship, where he received an associate degree. Mr. Howell went on to attend Oklahoma Baptist University, where he played basketball and received his bachelor's degree, majoring in speech and history. He served 16 years in the Oklahoma State Senate and seven years as a Midwest City municipal judge. He received his J.D. from the OU College of Law in 1963.

James Dudley Hyde of Oklahoma City died Feb. 20. He was born May 20, 1944, in Oklahoma City. He graduated from OU in 1966 and received his J.D. from the SMU Dedman School of Law in 1969. **He joined the U.S. Army Judge Advocate General's Corps, serving first in Panama and later at the Pentagon.** While stationed in Washington, D.C., he earned his LL.M. in taxation from The George Washington University Law School. Mr. Hyde joined the law firm of McAfee & Taft in 1974. He was an employee benefits attorneys, earning election as a charter fellow in the prestigious American College of Employee Benefits Counsel and perennial inclusion in various industry publications. He quickly developed a national reputation for his knowledge and expertise among clients as well as his numerous contacts within the Internal Revenue Service, U.S. Department of Labor and other governmental agencies. Mr. Dudley ran multiple marathons and helped found the Red Bud Classic and the OU Arts Classic.

Robert Howard Jones of Shawnee died Nov. 20, 2025. He was born Dec. 29, 1931, in Shawnee. Mr. Jones attended Shawnee schools, graduating with the class of 1949 and serving as senior class president. He was a member of the high school tennis team, the National Thespian Society and the National Honor Society. He graduated from OSU in 1953, where he was a member of the Air Force ROTC, Blue Key National Honor Society and Kappa Sigma fraternity. He received his J.D. from the OU College of Law in 1956, where he was President of the Delta Theta Phi Law fraternity and directed the law school chorus. **He served for two years in the Judge Advocate General's Corp for the U.S. Air Force as a JAG officer. Mr. Jones was stationed at Langley Air Force Base in Hampton, Virginia and Foster Air Force Base in Victoria, Texas.** After his service in the Air Force, he returned to Shawnee to open his private law practice and practiced for 60 years. He was also an adjunct professor, teaching business law at Oklahoma Baptist University for 18 years. He served as municipal judge for the City of Shawnee for 49 years.

Gregory Alan Julian of Los Angeles, California, died May 17. He was born Oct. 23, 1960, in Hugo. He graduated from Valliant High School and from OU with a bachelor's degree in finance. Mr. Julian received his J.D. from the OU College of Law in 1985. His journey has taken him to Washington, D.C. (where he served in The White House), New York City (where he was cast on a network television show as an actor), back to Oklahoma (where he litigated in both civil and criminal courts), London (where he set up and staffed a European headquarters for a U.S.-based marketing firm) and ultimately to Los Angeles, where he eventually joined Metro-Goldwyn-Mayer Studios and rose to senior vice president of the legal division, overseeing library rights for MGM's 4,200 film library. His expertise spanned entertainment law, licensing, intellectual property, corporate governance and new media. When Amazon acquired MGM in 2022, he helped guide the storied studio's transition into its next chapter.

Christopher T. Kenney of Oklahoma City died June 10. He was born June 1, 1968, in Oklahoma City. He attended Christ the King Catholic School and Bishop McGuinness High School before continuing his education at OU. He received his J.D. from the OU College of Law in 1993. He served as senior vice president and general counsel at American Fidelity and was with the company for more than 20 years. His early legal career was distinguished by dedicated service with the Oklahoma Insurance Department. As an insurance executive at the insurance department, he then went to the Reserve National Insurance Company, where he worked with his father-in-law, Roger Cole, as a key member of the legal team before joining American Fidelity. In the Oklahoma City business and civic community, Mr. Kenney served on multiple boards and was a proud member of Leadership Oklahoma, Leadership Oklahoma City, Salvation Army, Petroleum Club, Oklahoma City Golf and Country Club and Phi Delta Theta fraternity.

Thomas Donald Kivell of Tulsa died April 21. He was born Feb. 29, 1948, in Lincoln Park, Michigan. Mr. Kivell graduated from Michigan State University in 1970. He received his J.D. from the TU College of Law in 1975. He began his legal career in Tulsa at the firm of Blackstock, Joyce, Pollard and Montgomery, and later co-founded the firm Kivell and Mundell. Kivell and Mundell became Kivell, Rayment and Francis PC in 1991, and continues to be one of Oklahoma's real estate law firms. Mr. Kivell founded FirsTitle Abstract Services Inc. in 1985 and purchased Smith Brothers Abstract and Title Company in 1989. Over the course of his career, he practiced in the areas of commercial real estate, banking, corporate transactions and mortgage matters.

E. Joe Lankford of Norman died April 24. He was born July 19, 1947, in Butler, Missouri. He graduated from Northwest Classen High School in 1965. Mr. Lankford was a proud member of the ATO fraternity and took part in ROTC while earning his bachelor's degree from OU. He received his J.D. from the

OU College of Law in 1972. He opened his law firm in Norman in 1974 and practiced there until his retirement in 2020. After retiring, he continued to serve the community as a judge in Valley Brook.

John Edward Lee III of Edmond died Feb. 21. He was born Jan. 25, 1951, in Wilmington, Delaware. He graduated from the Colorado School of Mines and received his J.D. from the OU College of Law, graduating at the top of his class. He served as a petroleum engineer, spending a lifetime traveling overseas and later as an oil and gas attorney.

Jim Allen Lyon of Oklahoma City died May 16. He was born Feb. 13, 1947. He received his J.D. from the OCU School of Law in 1980.

David L. Peterson of Tulsa died March 25. He was born April 22, 1943, in Asbury Park, New Jersey. He was part of the first graduating class of Nathan Hale High School. Mr. Peterson attended Brigham Young University, where he majored in political science and Portuguese. **Following graduation, he enlisted in the U.S. Army during the Vietnam War.** He received his J.D. from the OU College of Law. After several years in private practice as an attorney, Mr. Peterson was appointed as a special judge for Tulsa County and later as a district judge by Gov. Nigh. Later in his career, he served as the presiding judge in Tulsa County and as chair of the Oklahoma Assembly of Presiding Judges, earning the respect of colleagues and the community for his fairness, integrity, and dedication. In retirement, he was deeply involved with the Tulsa Rotary Club, where he co-led the Nicaragua Project.

Robert James Reid of Helotes, Texas, died June 18. He was born Sept. 11, 1940. Mr. Reid received his J.D. from the OU College of Law in 1965.

Thomas Hill Reynolds of Tulsa died April 17. He was born Sept. 12, 1949. He graduated from Central High School in 1967. **Mr. Reynolds joined the Oklahoma Air National Guard in 1968, later serving on active duty in the U.S. Air Force from 1972-1974, where he was honorably discharged.** He graduated from the University of Tulsa in 1977 and received his J.D. from the TU College of Law in 1982.

John Thomas Severe of Stillwater died June 6. He was born Nov. 17, 1951, in Perry. He graduated from Perry High School in 1970, where he wrestled and was the drum major for the marching band. He graduated from OSU in 1974 with a bachelor's degree, where he was a member of the Kappa Sigma fraternity. He received his J.D. from the OCU School of Law. While at OCU, he was a member of the Phi Delta Phi Legal Fraternity and graduated 6th overall of 169 in his graduating class. Mr. Severe was an attorney and counselor of law for over 47 years. For the majority of his professional career, he operated a private law firm practicing criminal law, civil law, civil litigation, personal injury, family law and estate planning. At the beginning of his professional career, he served as the Stillwater city attorney, assistant district attorney for Payne and Logan counties and Yale city attorney. Over his lifetime, he was an active member in the Stillwater community and region serving on the Stillwater United Way Board of Directors, Stillwater YMCA Board of Directors, Stillwater Life Center Board of Directors, Stillwater Wrestling Club, Valley Hope Association Advisory Board, Noon Lions Club, Salvation Army Advisory Board and Perry High School Alumni Association Board of Directors.

Fred Douglas Shirley II of Norman died June 17. He was born June 7, 1948, in Watonga. He attended Watonga High School, where he earned his Eagle Scout rank and graduated in 1966. He attended OU, where he was an active and proud member of the Sigma Chi Fraternity and the OU ROTC program. Mr. Shirley graduated in 1970 with a bachelor's degree in business administration. **He was soon commissioned as a first lieutenant in the United States Army.** Following his military service, Mr. Shirley received his J.D. from the OCU School of Law in 1975. After graduation, he moved his family back to Watonga and joined his father in the practice of law at Shirley, Stephenson, Shirley and Webber. He later opened his own practice, where he retired in 2015. He practiced as an attorney for 50 years. He was a member of Kiwanis, the Watonga Hospital Board, the American Legion and the Watonga First United Methodist Church, where he served in numerous leadership roles. He was also active in the Watonga High School Booster Club, the Watonga Chamber of Commerce and as a Boy Scout troop leader. He coached Little League teams, placed flags throughout the community for holidays, taught Sunday school and volunteered for countless civic and community activities. For many years, he was "The Voice of Eagles," calling Watonga Eagle Football games under the Friday night lights.

Jeffrey Steinke of Tulsa died Feb. 12. He was born Dec. 23, 1949. Mr. Steinke graduated from the University of Tulsa, where he was a member of Lambda Chi Alpha. He received his J.D. from the TU College of Law.

Dave Stockwell of Norman died May 18. He was born June 3, 1956, in Oklahoma City. He graduated from Norman High School in 1974 and graduated with his bachelor's degree from OU in 1979. He received his J.D. from the OU College of Law in 1989. Mr. Stockwell began his career as an agent for the Oklahoma Bureau of Narcotics. He later became an attorney who helped countless individuals through difficult seasons of life. He served as past president of the Cleveland County Bar Association and was the chair and co-creator of the Cleveland County Community Sentencing Program and the Cleveland County Drug/Treatment Court. He was also a member of the Cleveland, Oklahoma and McClain County Bar Associations, as well as the Choctaw and Chickasaw Bar Associations.

Terry W. West of Shawnee died June 6. He was born July 3, 1938, in Ada. He graduated from Francis High School in 1956 at the top of his class and attended East Central University and OU. **In January 1959, Mr. West enlisted in the Army reserves**. He later attended night classes at the TU College of Law, graduating in 1966, while working for the Aetna Insurance company during the day. He served as the managing editor of the *Tulsa Law Review.* In 1967, he and a colleague opened the law firm of Henry and West. He was a member of the Oklahoma Association for Justice since 1968 and served as the president twice (1973 and 1988). He was a fellow in the American College of Trial Lawyers and the International Academy of Trial Lawyers. He served on the Board of Governors of the Oklahoma Bar Association from 1987-1989, has twice served on the Judicial Nominating Commission and was appointed by the Oklahoma Supreme Court to serve on three standing committees. In addition to his career as a trial lawyer, Mr. West provided decades of public service at the state and local level. He was a lifetime trustee of the Sarkey's Foundation. In 2019, the TU College of Law opened the Terry West Civil Legal Clinic, which offers wide-ranging experiential learning opportunities for TU law students in areas of public service law that include: housing, consumer affairs, education, healthcare and issues affecting veterans. In 2022, Mr. West was inducted into the TU College of Law Hall of Fame.

EDITORIAL CALENDAR

2026 ISSUES

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Editor: Melissa DeLacerda
melissde@aol.com

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Government & Administrative Law Practice
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NOVEMBER
Appellate Practice
Editor: Melanie Wilson Rughani
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DECEMBER
Taxation
Editor: Melissa DeLacerda
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SEEKING

The family of Dr. Mehran Shahsavari, deceased, seeks to identify counsel that assisted Dr. Shahsavari with estate planning services. If you assisted Dr. Shahsavari with legal services, specifically estate planning, please contact Natalie McMahan at nmmcmahan@phillipsmurrah.com or (405) 235-4100.

POSITIONS AVAILABLE

THE LAW FIRM OF COLLINS, ZORN & WAGNER, P.L.L.C., is currently seeking an associate attorney with a minimum of 2 years' 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. Collins, Zorn and Wagner, P.L.L.C., is primarily a civil defense litigation firm focusing on defense of civil rights claims, employment claims, constitutional law claims, negligence claims, and general insurance defense. Salary is commensurate with experience. Please provide your resume, references and a cover letter including salary requirements to info@czwlaw.com.

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POSITIONS AVAILABLE

THE CITY OF OKLAHOMA CITY IS CURRENTLY ACCEPTING APPLICATIONS for an AMC I, II or III, depending on qualification, in the Trusts and Public Works Division of the Office of the Municipal Counselor. The selected applicant will provide legal services and guidance to the Department of Airports and the Oklahoma City Airport Trust ("OCAT") to ensure that the three airports in OCAT's airport system are operated in a manner consistent with the requirements of federal and state laws or regulations, and City ordinances. Experience and/or education in municipal law, airport law, public trust, public construction, commercial leasing, contracting, land transaction, public financing, grant administration, environmental law, and/or oil and gas law is desirable. The individual selected for this position is expected to exemplify a high degree of professionalism in the office, courtroom, before City Council or OCAT, and in all public appearances, exhibiting trustworthiness and the ability to respect confidence. For additional information and to apply online, go to http://www.okc.gov/jobs or call the City's Human Resources Department at (405) 297-2530. Applications and resumes will be accepted until the position is filled and preference may be given to applications received within the first 15 days of this announcement being posted. EOE

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THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA in Muskogee, OK is seeking applicants for multiple Assistant U.S. Attorney positions (AUSA). AUSAs in the Criminal Division have the 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. AUSAs in the Civil Division have the opportunity to represent the United States, its agencies, officers, and employees in civil actions in the Eastern District of Oklahoma. The e-Litigation AUSA position promotes standardized discovery and case-management practices for the office and provides technical and strategic guidance to litigation teams on collection, review, production, and presentation of evidence for both the Criminal and Civil Divisions. 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. Please refer to announcements for complete list of qualifications and duties. AUSAs may live within 25 miles of the district, which includes much of the Tulsa metropolitan area. Vacancy announcements 26-OKE-12901888-AUSA (Criminal); 26-OKE-12912780-AUSA (Civil); 26-OKE-12912691-AUSA (e-Litigation) at www.usajobs.gov (Exec Office for US Attorneys). Applications must be submitted online. See the How to Apply section of announcements for specific information. Questions may be directed to the Human Resources Division for the Eastern District of Oklahoma via email at usaoke.hrmb@usdoj.gov. These are open, continuous announcements that have been extended to August 31, 2026, with reviews of applications conducted periodically, until all positions are filled.

POSITIONS AVAILABLE

CIVIL LITIGATION ATTORNEY – OKLAHOMA CITY. Gordon Rees Scully Mansukhani, LLP (GRSM), a full-service Am Law 100 firm, seeks civil litigation attorneys for its Oklahoma City office. Candidates should have a minimum of three years of experience; all experience levels are welcome to apply. Openings are available across multiple practice areas, including Employment, Complex Commercial, Oil & Gas, Construction, Healthcare, Professional Liability, Insurance Coverage/Bad Faith, Environmental, Product Liability, and General Liability. Qualified candidates must be licensed in Oklahoma and possess strong litigation, writing, and communication skills, along with a solid academic background. Trial experience is preferred but not required.

GRSM offers a collaborative work environment, meaningful client interaction, professional development, and advancement opportunities. Competitive compensation, bonus potential, and comprehensive benefits, including student debt repayment assistance, are provided. For consideration, please submit a cover letter, resume, and writing sample to GRSM Career Website: www.grsm.com/careers. Equal Opportunity Employer. No recruiter inquiries.

Retirement – What's That?

By Dan Crawford

AFTER DECADES OF depositions, deadlines, and the occasional courtroom battle, many attorneys imagine retirement as a long, quiet exhale. But for most lawyers, the instinct to analyze, advocate, and serve *never truly goes away*. In fact, retirement often becomes the perfect time to use those hard-earned skills in ways that are more flexible, more personal, and sometimes even more rewarding than the daily grind of practice.

One of the most fulfilling paths for retired attorneys is service to nonprofit organizations. Many charities benefit greatly from board members who understand governance, legal compliance, and responsible decision-making. I sit on the Board of Trustees for the Oklahoma Lions Meadows of Hope, a nonprofit that provides residential care, education, and stability for children and their foster parents who need a supportive environment. Organizations like this rely on thoughtful leadership, and attorneys are uniquely positioned to help guide policy decisions, ensure proper oversight, and assist with legal and organizational issues that arise. For many retired lawyers, nonprofit board service offers a way to continue contributing to the community while supporting a mission they care deeply about.

Bar associations also offer numerous opportunities for attorneys to stay involved after retirement. Programs such as Ask A Lawyer, another mission of mine, often held in connection with Law Day and organized through groups like the OBA, allow attorneys to volunteer their time answering legal questions from members of the public. Even a few hours of volunteer service can help someone better understand their rights and options while reinforcing public confidence in the legal profession.

Another area where retired attorneys can make a lasting impact is through mentorship and support of educational programs. For example, the National High School Mock Trial Program and similar state and regional mock trial programs depend heavily on volunteer lawyers and judges. These competitions introduce students to the courtroom environment and the principles of advocacy, evidence, and critical thinking. Retired attorneys who volunteer as judges, scorers, or coaches often find it especially rewarding to watch students develop confidence and skill as they simulate real trials. In many cases, these programs inspire students to pursue careers in law, public service, or civic leadership.

For attorneys interested in continuing to contribute directly to the integrity of the profession, participation in disciplinary or oversight roles can also be meaningful. In Oklahoma, lawyers may serve on many panels and committees. I am a current member of the Professional Responsibility Tribunal, which hears matters involving attorney discipline and professional conduct. These panels rely on experienced attorneys who can thoughtfully evaluate evidence and apply the ethical standards governing the profession. Service on such tribunals allows retired lawyers to help maintain the standards and public trust that underpin the legal system.

Beyond these specific examples, retired attorneys frequently engage in mediation, civic leadership, teaching, and mentoring younger lawyers. Law schools, bar associations, and community organizations often welcome experienced attorneys as speakers or advisors. The wisdom gained through years of practice – whether in litigation, transactional work, or public service – can provide invaluable guidance to those just entering the profession.

Perhaps the greatest reward of these activities is the continued sense of purpose they provide. The habits formed during a legal career – such as careful reasoning, fairness, and service – do not disappear when a lawyer leaves daily practice. Instead, retirement can offer the freedom to apply those skills in ways that are less constrained by schedules or billing pressures.

Ultimately, the legal profession is built on a tradition of service. By volunteering with nonprofits, assisting with public outreach programs, supporting educational initiatives or serving on professional oversight bodies, retired attorneys can continue to strengthen both their communities and the profession itself. Retirement, in this sense, becomes not an end to a legal career, but a new beginning.

Remember the immortal words of the great 19th century educator Horace Mann: "Be ashamed to die until you have won some victory for humanity." Retirement gives us that opportunity to win those victories!

Mr. Crawford recently retired after many years of practice in Tulsa. He is a long-time volunteer for the Oklahoma High School Mock Trial program and well as serving as the long-time Law Day coordinator for the Tulsa County Bar Association.

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Health Law
Maggie Martin, Oklahoma Hospital Association
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David Herber, Gable Gotwals
Cannabis Law
TBD
Criminal Law
Barry L. Derryberry,
First Assistant Federal Defender
Mental Health (Ethics)
TBD
Animal Law
Charis Ward, Ward Law, LLC

DAY TWO - OKC

Business & Corporate Law
Evan Chambers, Hartzog Conger Cason
Law Office Management and Technology
Julie Bays, Director, Management
Assistance Program, OBA
Real Property Law Update
Kraettli Epperson, Nash, Cohenour &
Giessmann, P.C.
Family Law
Kensey Wright, Doerner, Saunders, Daniel
& Anderson LLP
Estate Planning and Probate Law
Philip Feist, Heirline Legal Services PLLC
Ethics
Gina Hendryx, General Counsel, OBA

DAY ONE - TULSA

Health Law
Maggie Martin, Oklahoma Hospital Association
Bankruptcy Law
David Herber, GableGotwals
Cannabis Law
Amber Peckio, Amber Law Group
Criminal Law
Barry L. Derryberry,
First Assistant Federal Defender
Mental Health (Ethics)
TBD
Animal Law
Charis Ward, Ward Law, LLC

DAY TWO - TULSA

Business & Corporate Law
Evan Chambers, Hartzog Conger Cason
Law Office Management and Technology
Julie Bays, Director, Management
Assistance Program, OBA
Real Property Law
Kraettli Epperson, Nash, Cohenour &
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