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# THE OKLAHOMA BAR Journal

Volume 95 — No. 8 — October 2024



Aviation  
Law



**OBA CLE**  
Continuing Legal Education

THURSDAY,

**OCTOBER 31, 2024**

10 a.m. - 1 p.m.

Oklahoma Bar Center, OKC

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**MCLE 2.5 ETHICS**



**FEATURED SPEAKER**



**MARK S. DARRAH**

Attorney & Author, Tulsa, OK



# AVOIDING LEGAL VAMPIRES: *Lessons from Dracula*

## **COURSE DESCRIPTION:**

Attorneys often get entangled with clients, cases, judges, and other lawyers that just seem to suck the life out of us. Learn to avoid, overcome and disempower these and other vampires in your practice with lessons drawn from *Dracula*, a novel that begins with young British solicitor Jonathan Harker traveling to Transylvania to meet a new client.

This program explores how to maintain one's vitality and to recognize the early signs of those events and situations that may diminish us. Our own personal ethics and professional ethics may be our strongest power. We will consider common strategies for extricating ourselves from unhealthy cases and clients and, perhaps, to overcome and transform them.

## **ABOUT OUR SPEAKER:**

Mark S. Darrah maintains a general civil practice in mid-town Tulsa. A substantial portion of his legal work involves estate planning, probate, estate administration, trusts, and trust litigation.

Mark is a graduate of the University of Southern California and the University of Oklahoma College of Law. He has practiced in Tulsa since 1982 and is a member of all relevant bar associations.

Darrah is the author of *A Catalogue of Common People*, a collection of personal essays and commentaries, an occasional contributor to "Studio Tulsa" on KWGS 89.5 FM, and an amateur fiddler. He was the 2018 Carl G. and Gladys L. Herrington Distinguished Lecturer at Rogers State University.

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# THE OKLAHOMA BAR Journal

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Editor: Melanie Rughani

*COVER: Replica of the Winnie Mae, the record-setting aircraft owned by aviation pioneer Wiley Post, on display in the Great Hall at the Oklahoma History Center. Photograph by Jim Argo. Courtesy of the Oklahoma Historical Society.*

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# OBA: Promoting Justice

By Miles Pringle

**F**OR ITS AUGUST MEETING THIS YEAR, THE OBA Board of Governors met in Ardmore to develop a new strategic plan. The board was welcomed by the Carter County Bar Association and worked with key members of the OBA staff to make meaningful decisions about the OBA and its future. This process has been years in the making. Under the leadership of 2022 OBA President Jim Hicks, the association conducted a significant member survey to gauge membership priorities and concerns. Under the leadership of President Brian Hermanson in 2023, the OBA conducted additional surveys centered around technology and the Annual Meeting. As your president in 2024, we have continued to move forward – creating action plans based on your feedback.

The final version of the plan will be presented for approval at this month's board meeting, but I am happy to share some of the big-picture themes. As our members know, the OBA is a mandatory bar association with

its rules creating and controlling and bylaws promulgated by the Oklahoma Supreme Court. The preamble to our rules sets out many ambitious goals, such as advancing the administration of justice; fostering members with high ideals of integrity, learning, competence and public service; preventing the unauthorized practice of law; and encouraging practices that will advance the honor and dignity of the legal profession. The board and staff distilled those goals into its vision statement.

## THE VISION: PROMOTING JUSTICE

Step one of the strategic planning process involved articulating our vision: "Promoting Justice." Our association will implement this vision through focusing on our mission, defined as advancing the



*Focused on the future: The OBA Board of Governors and bar staff directors gather in Ardmore for a strategic planning retreat to define the association's vision, mission and core values.*

administration of justice through education and regulation. The core values of the OBA are 1) ethical representation, 2) member involvement and 3) dedicated leadership. Ethical representation is embodied by serving the public interest with integrity. Member involvement is demonstrated by fostering participation through the recognition of different experiences and perspectives within our profession. Dedicated leadership means providing accountability and vision for the organization.

There are three main areas of focus: 1) the members, 2) the organization and 3) the administration of justice. The OBA will support members by investing in the professionalism, resiliency and competency of Oklahoma attorneys. We will strengthen the organization with a mindset of excellence, efficiency and long-term sustainability, and we will use evidence-based decisions to drive our future. The OBA will improve the administration of justice by advancing the rule of law and the public trust in the legal system.

We developed nine goals with many objectives to accomplish each. One goal is to develop a comprehensive approach to address the various career stages and requirements of our members.

*(continued on page 63)*



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# Aircraft-Backed Securitization: Lending Money Using Aircraft Collateral

By Jack P. Gilchrist and Tony Morales

**H**OW MUCH DO YOU KNOW ABOUT BANKS or other lenders loaning money where aircraft equipment is being offered as collateral for a loan? If you were not aware that the Federal Aviation Administration Mike Monroney Aeronautical Center, located in Oklahoma City, is home to the FAA Aircraft Registry, you are among the majority of lawyers in the U.S., not to mention our colleagues right here at home. You're not alone if you did not know that the FAA Aircraft Registry is where all mortgages, leases, liens and title documents are filed any time aircraft, engines or spare aircraft parts are accepted as collateral to perfect the security interests of a lender. In this article, our objective is to provide the reader with basic information that should be thought about anytime aviation assets are being considered as collateral for a loan.

## MORTGAGE AND LEASE INTERESTS IN AIRCRAFT EQUIPMENT: THE FAA PERSPECTIVE

### *Initial Considerations of the Aircraft Lender*

Aircraft in the U.S. are registered with the FAA Aircraft Registry in the name of the owner.<sup>1</sup> Generally speaking, the U.S. Transportation Code only allows U.S. citizens to own and register aircraft; however, there are legal procedures to provide for beneficial ownership by noncitizens.<sup>2</sup> Any lender will need to consider that its security interest in an aircraft is dependent on whether

1) the aircraft is registered with the FAA in the name of the debtor at the time the mortgage is entered; 2) if the debtor is purchasing the aircraft at the same time as they're entering the mortgage, the mortgage must be accompanied by the Aircraft Registration Application (FAA Form AC 8050-1) and an acceptable form of evidence of ownership of the debtor; or 3) if the debtor has since sold the aircraft on to a third party and if they were the owner of the aircraft at the time the aircraft mortgage was entered, that mortgage can be filed for recording with the FAA after the fact.

Any lender considering a loan that includes aircraft as collateral will want to obtain a current legal opinion, title report or title memorandum regarding the FAA records relating to the aircraft equipment that confirms at least the following: 1) an accurate description of the aircraft equipment, 2) the current registry status of the aircraft with the FAA, 3) the current registered owner of the aircraft and 4) a description of any instrument or document that serves as an open and outstanding lien or encumbrance in the FAA registry's records covering the aircraft equipment.

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### *Who Can Be a Mortgagee?*

It should be noted that although U.S. citizenship is required for aircraft ownership and registration with the FAA, there is no similar requirement for aircraft lenders, lessors or lessees. There is *no* United States citizenship requirement or other limitation as to who may obtain the security interest in the aircraft equipment/collateral as a mortgagee (usually a lender but hereafter “mortgagee”) under an FAA aircraft security agreement,<sup>3</sup> however, in the event of the repossession of an aircraft, a mortgagee must meet the registered owner requirements under the Transportation Code, including U.S. citizenship, if it takes action to register an aircraft in its name as owner after foreclosure.<sup>4</sup>

### *Fundamentals of a Recordable Aircraft Mortgage*

To perfect the security interests of a mortgagee in an aircraft, aircraft engines or propellers, the mortgage or security agreement creating the security interest must first be filed for recording with the FAA. In order for the FAA to record a mortgage relating to aircraft registered in the United States, the bank or other lender should make certain the mortgage instrument meets regulatory requirements to ensure its recordability by the FAA registry, including, but not limited to, the complete and accurate description of the aircraft by the 1) manufacturer’s name, 2) model number, 3) manufacturer’s serial number and 4) U.S. registration number (if issued).<sup>5</sup>

### *Authority and Signatures*

As referenced earlier, the grantor or mortgagor must be the registered owner of the aircraft.<sup>6</sup>

The only original signature required on an FAA mortgage is that of the debtor, though in practice, both the mortgagor and mortgagee usually sign.<sup>7</sup> However, a contract of conditional sale or a lease used for security purposes must be signed by all parties.<sup>8</sup> The original signatures may include signature blocks containing “wet ink” signatures or approved forms of a digital signature<sup>9</sup> and must contain the title of the signatory, who must be an officer, director, manager or attorney-in-fact.<sup>10 11</sup> “Authorized representative” or similarly described generalized titles are not accepted by the FAA and will cause the mortgage to be rejected from recording and returned to the submitting party with instructions to revise the signature and resubmit for acceptance and recordation of the instrument in the FAA records. Though seemingly an easy fix, lenders or their legal counsel should be mindful to proactively avoid such rejections from the FAA Aircraft Registry. Although the error may seem small and, in a vacuum, easily fixed, such simple remedies for document defects are disproportionate to the increased legal risk and transactional costs they cause in delays of time, excesses of resources and potential gaps in perfection. Aviation lenders are wise to follow the carpenter’s rule of caution: measure twice, cut once.

### *Contents, Definitions of Terms and Attachments*

The FAA mortgage should contain words of conveyance of the security interests covering the aircraft equipment.<sup>12</sup> All defined terms should be either contained in the text of the mortgage or included as an attachment.<sup>13</sup>

Furthermore, any instrument upon which the mortgage relies for definitions must be attached to the mortgage when filed or filed separately for recording by the FAA.<sup>14</sup> Accordingly, it’s good practice, where appropriate, to use an appendix containing the full set of definitions, thereby making it unnecessary to attach full loan agreements or other instruments containing definitions. Using an appendix of definitions provides an acceptable approach to keeping out of the FAA (public) record any confidential or proprietary information that may be described in the terms of the underlying loan documents; importantly, the FAA allows the redaction of information contained in an appendix or attachment. As such, the appendix of definitions should be reviewed closely to determine if particular terms warrant such redactions. Finally, the mortgage must be accompanied by an appropriate FAA filing fee.<sup>15</sup>

### *Assignments, Amendments and Supplements to Mortgages or Leases*

Assignments, amendments and supplements must either be attached to the mortgage or lease when filed with the FAA or, if the initial mortgage has been previously recorded by the FAA, the newly submitted assignment, amendment and/or supplement must recite the instrument being assigned, amended or supplemented by expressly describing the original document by 1) date, 2) parties, 3) FAA recording date and 4) FAA conveyance number.<sup>16</sup> In the instance where parties desire to effectuate an assignment of interests, the assignment must be signed at least by the assignor.<sup>17</sup> Furthermore, an amendment of or a supplement to an instrument previously recorded by the FAA

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must 1) satisfy the requirements for recording the original conveyance and 2) describe the original conveyance in sufficient detail to identify it.<sup>18</sup>

#### *Engines and Propellers Covered by Mortgages and Leases*

Aircraft equipment – such as engines, propellers and, in certain rare circumstances, spare parts (as discussed below) – are often included as collateral in an FAA security agreement and/or leased under a lease, sublease or operating agreement. Such aircraft objects may be mortgaged or leased by themselves, separate and apart from an airframe. Mortgages granting an interest in engines or propellers must describe the engine and propeller by manufacturer, model and serial number and meet the same requirements as mortgages filed against airframes, as described earlier.<sup>19</sup> Yet, there are key distinctions to analyze when working to effectively create a security interest in aircraft collateral using FAA mortgages that may cover only engine or propeller equipment. Engines, propellers and spare parts are not registered in the name of their owner by the FAA registry.<sup>20</sup> In fact, there is no requirement – under either the Transportation Code or the regulations – that the mortgagor/grantor (of an FAA security agreement) or a lessor (of a lease agreement) be a U.S. citizen.

#### *Threshold Requirements for Engines and Propellers as Collateral Under a Mortgage*

For instruments covering engines and/or propellers, such aircraft equipment must meet certain threshold requirements to be eligible for instruments to be recorded against them by the FAA. Therefore, drafters of FAA mortgages and



leases covering engines and/or propellers must first determine if each engine has 550 or more rated takeoff horsepower or the equivalent thereof. For propellers, these must be capable of absorbing more than 750 shaft horsepower or the equivalent thereof. If those threshold requirements are met, then the description for each aircraft object must state this fact.<sup>21</sup>

#### *Aircraft Spare Parts Covered by FAA Mortgages*

Spare parts can be collateral covered by an FAA mortgage but only when those spare parts are “maintained by or on behalf of a U.S. Air Carrier.”<sup>22</sup> Such a mortgage must include a statement concerning the certification of the U.S. air carrier.<sup>23</sup> Furthermore, the FAA mortgage against spare parts does *not* need to describe the parts specifically (*i.e.*, by manufacturer, model and serial number, as with airframes, engines and propellers) but only generally by type.<sup>24</sup> The spare parts mortgage

must also describe the location or locations of the spare parts the mortgagee will take as collateral. For example, it’s acceptable by the FAA registry for the purposes of recordation to describe the spare parts, generally, as simply as “all de Havilland DHC-7 spare parts located at Hangar 8, Washington Dulles International Airport.”<sup>25</sup> Aircraft spare parts mortgages are not common because of the narrow category qualifying spare parts as collateral, *e.g.*, that they are maintained by a certificated air carrier.

### **MORTGAGE AND LEASE INTERESTS IN AIRCRAFT EQUIPMENT: THE INTERNATIONAL REGISTRY PERSPECTIVE**

#### *Introduction to the International Registry*

In addition to creating the security interest in and to the aircraft equipment serving as collateral under an FAA mortgage (as described earlier), lenders and

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their legal counsel must also be prudent in perfecting the security interests by making registrations related to the filed FAA mortgage on the International Registry (IR), thereby achieving perfection through the notice requirements of state, federal and international law. The IR originates from the Nov. 16, 2001, Convention on International Interests in Mobile Equipment (the “treaty” or “Cape Town Convention” (CTC)) and the Protocol on Matters Specific to Aircraft Equipment (the “protocol”), which established the legal framework for the Aviation Protocol. On Oct. 28, 2004, the United States ratified the CTC, and on March 1, 2006, the CTC entered into force domestically as the United States codified it into the U.S. Transportation Code.<sup>26</sup> The Aviation Protocol under the CTC created the IR as a framework of registering “international interests,” which are security interests in airframes, aircraft engines and helicopters derived from a lease, security agreement or associated instrument, such as an assignment, supplement or amendment. The purpose of the IR is to create uniformity between contracting states for liens, default provisions and insolvency. Generally, if the aircraft equipment covered by the security agreement meets applicable size requirements, the lender’s/mortgagee’s legal counsel should advise and ensure that the corresponding registration of security interest with the IR has been made, in addition to filing and recording mortgages with the FAA.

Operatively, the IR is an electronic system for registering interests in qualifying aircraft assets. These IR registrations serve as a notice mechanism for the

protection of financial interests in such aircraft assets. Across various countries and regional economic organizations that have ratified the CTC, there are over 80 contracting states to the protocol to the CTC that may utilize the simple, web-based data for aircraft equipment listed on the International Registry, accessible 24 hours a day, seven days a week, 365 days a year.

#### *FAA Intersection With the IR*

Since the entry into force of the CTC on April 1, 2006, under United States law, the perfection of interests in qualifying aircraft equipment is a two-fold process: 1) the *filing of instruments with the FAA* for recordation, as described earlier, and 2) the *registration of interests on the IR*.

The filing of instruments with the FAA for recordation does not create a complete form of perfection or priority; instead, the FAA filing is simply a precursor to the registration on the IR. If a registration is not made on the IR, a third party can take priority over any unregistered interest. Not all aircraft financing transactions

fall within the purview of the IR. Therefore, it is crucial to evaluate whether the contemplated transaction qualifies for registration on the IR. In doing so, practitioners will analyze certain threshold qualities of 1) the aircraft equipment covered in the transaction and 2) the documents and interests qualifying for IR registration eligibility.

#### *Aircraft and Engines*

##### *Qualifying for IR Registrations*

Registration on the IR is primarily limited to larger aircraft equipment, and so, legal counsel and lenders should first determine whether its contemplated transaction even qualifies for registration on the IR. This initial analysis hinges on two primary considerations. First, will the collateralized aircraft equipment fall within the CTC’s definition of “aircraft objects”? That is, the analysis is whether the aircraft object is of a certain threshold size that makes the particular asset eligible for registration on the IR.

Aircraft objects under the CTC include airframes, engines and helicopters. Propellers are not

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Special FAA and IR counsel is always recommended for this niche corner of the legal field, but having a basic understanding of the workings of such fields will help your client understand the sophistication of aviation transactions.

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covered by the CTC or protocol. Furthermore, to qualify for registration on the IR and thereby avail its interest holders of the rights, obligations and benefits of the IR's legal protections, an *airframe* is eligible if it is type-certified to either 1) transport at least eight people, including its crew, or 2) transport goods in excess of 2,750 kilograms.<sup>27</sup> *Jet engines* that have at least 1,750 pounds of thrust and *turbine or piston-powered engines* rated with at least 550 horsepower are eligible for IR registration.<sup>28</sup> A *helicopter* qualifies if it is type-certified to either 1) transport at least five people, including crew, or 2) transport goods in excess of 450 kilograms.<sup>29</sup>

#### *Documents and Interests Qualifying for IR Registration*

Additionally, practitioners must be satisfied that certain connecting factors necessary for qualifying aircraft objects have been identified and met. Specifically, the “debtor” party in the transaction must be situated in a contracting state to the CTC at the time of the conclusion of the agreement.<sup>30</sup> Alternatively, it is inconsequential where the “creditor” party is situated.<sup>31</sup> Moreover, interests also qualify for IR registration if the aircraft is or will be registered in a contracting state.<sup>32</sup> For example, because the U.S. is a contracting state to the CTC, most transactions that involve a new U.S. registration of the aircraft require IR registration.

#### *Making Registrations on the IR*

**Type of registrations.** If it has been determined that the CTC applies to the transaction, registrations must be made on the IR. There are two basic types of IR registrations, both of which may be involved in a transaction that

includes a U.S.-registered aircraft: a *contract of sale*, a contract by which title to an aircraft object transfers from a seller to a buyer; and an *international interest*, which arises under a security agreement, a conditional sales contract with a title retention clause or a lease.

**Logistics of registrations.** All parties to the registration must be qualified with the IR as a “transacting user entity” (TUE). Applications to become a TUE are filed directly with the IR by the party wishing to register the interest or through an agency familiar with the IR, such as a law firm. Processing times to review the application and enable the TUE on the IR varies in length; therefore, it's highly advisable to address a party's lack of a TUE immediately upon determining that the transaction will necessitate IR registrations to head off any potential to delay the closing of the transaction or create a wide gap in the initial FAA registration and the delayed IR registration where the security interest in the aircraft equipment is not perfected.

Once the IR registration is completed, the IR database record covering the particular item of aircraft equipment is immediately updated, and IR account holders may obtain a priority search certificate for a fee, which is issued by the IR and lists all IR registrations that have been made to the equipment. As a result, the registration of a lender's interests on the IR evidences the exact time when the perfection of the security interest covering the aircraft equipment is achieved.

#### **CONCLUSION**

The good news about lending money where aircraft, engines or propellers are the collateral offered is that between the FAA Aircraft

Registry and the International Registry, perfection and protection of the interests of a secured party can be clearly established. But just like many other things in life and law, the legal framework provides protection for those who take advantage of it. Special FAA and IR counsel is always recommended for this niche corner of the legal field, but having a basic understanding of the workings of such fields will help your client understand the sophistication of aviation transactions.

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#### **ABOUT THE AUTHORS**



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work, which he now utilizes to provide counsel on complex aircraft transactions in both the commercial and private aviation sectors. Mr. Morales received his J.D. from the University of Denver Sturm College of Law. He previously served as a member of the *Oklahoma Bar Journal* Board of Editors.

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## ENDNOTES

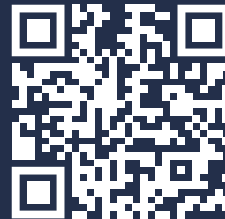
1. Title 14 Code of Federal Regulations, Part 47, §§47.1, 47.2, 47.3 and 47.5; See also Title 49 United States Code, §§44101-44104.
2. 14 CFR §§47.1, 47.2, 47.3, 47.5, 47.7, 47.8 and 47.9.
3. 14 CFR §§47.1, 47.2, 47.3, 47.5, 47.7, 47.8, 47.9 and 47.11.
4. 14 CFR, Part 49, §49.17(d); 14 CFR, Part 14, §49.33(b); 14 CFR §49.43; See FAA Aircraft Registry Examination Guidelines §4.1.8(b).
5. 14 CFR §49.35.
6. 14 CFR §49.17(d)(1).
7. 14 CFR §49.17(d)(6).
8. 14 CFR §14.13(a); 14 CFR §49.43; 14 CFR §49.33(c); 14 CFR §49.17 (d)(1); and 14 CFR §49.17 (d)(6).
9. See FAA Aircraft Registry Examination Guidelines §4.1.8(e), §4.6.1.
10. 14 CFR §49.33 and 14 CFR §49.13.
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# Perfecting Interests in Aircraft Engines

*By Preston G. Gaddis II and J. Robert Kalsu*



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## CAPE TOWN TREATY AND AIRCRAFT PROTOCOL

On March 1, 2006, the United States adopted the Cape Town Treaty and Aircraft Protocol (CTT).<sup>1</sup> Now a substantial number of countries (defined as “contracting states”) are parties to the CTT.<sup>2</sup> This is a significant change in the area of aircraft financing. By adopting the CTT, the contracting states agree to recognize interests perfected pursuant to the CTT.<sup>3</sup> Prior to that time, countries were not required to recognize interests perfected under the laws of other countries.

The CTT provides for perfection of interests in airframes, aircraft engines and helicopters (defined as “aircraft objects”)<sup>4</sup> created pursuant to “security agreements.”<sup>5</sup> Security agreements are defined to include leases and title reservation agreements. Interests created pursuant to security agreements are defined as “international interests” in the CTT. In addition, the CTT includes interests in aircraft objects created pursuant to a “contract of sale,” which is essentially a bill of sale or its equivalent.<sup>6</sup> As used herein, “sale” refers to a contract of sale. The CTT provides the only registration system for ownership of aircraft engines.

### CTT COVERAGE OF AIRCRAFT ENGINES

Although the CTT covers airframes, aircraft engines and helicopters, this article covers aircraft

engines and is therefore limited to them. “Aircraft engines” are defined in the CTT as jet propulsion engines of at least 1,750 pounds of thrust and turbine or piston engines of at least 550-rated takeoff horsepower.<sup>7</sup> The thrust and horsepower of aircraft engines can be determined by reference to the type certificate data sheet issued by the FAA for each particular make and model of engine and are available on the FAA’s website.<sup>8</sup> Additional information needed is the manufacturer’s serial number of the particular engine because the CTT deals with specific aircraft engines.

Aircraft engines are independent objects for purposes of registrations under the CTT. The registration of an interest in an airframe does not result in the registration of an interest in its installed engines. To be covered by a CTT registration, an

installed engine must be the subject of its own registration.<sup>9</sup>

In adopting the CTT, the United States designated the FAA registry as the point of entry. However, with respect to aircraft engines, the FAA is not a point of entry.<sup>10</sup> This means requirements for point-of-entry registrations do not apply to registrations of interests in aircraft engines.

### CTT REQUIREMENTS FOR INSTRUMENTS CREATING INTEREST

The CTT includes a number of requirements relating to instruments creating registered interests.<sup>11</sup> Included among them are:

- 1) Writing: For an interest to be eligible for registration under the CTT, it must be created pursuant to a written instrument.

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The best advice to a first-time user of the IR system is to retain a PUE to make any TUE registrations, determine if the aircraft engine is subject to any outstanding registrations and register any international interest or sale on the engine that is the subject of a financing or purchase.

- 2) Description of engine: The engine must be specifically described by its manufacturer, model and manufacturer's serial number.<sup>12</sup> This information can be found on the serial plate attached to every aircraft engine.
- 3) Obligations secured: The security agreement must include a general description of the obligations it is securing. Stating the sum secured is not necessary.
- 4) Conclusion of agreement: At the time of the conclusion of an agreement creating an international interest, the debtor must be "situated" in a contracting state. With respect to a sale, the seller must be situated in a contracting state at that time. "Situated" is broadly defined to include a party's place of incorporation or where it has its registered office, center of administration or place of business.<sup>13</sup>

#### **USING THE INTERNATIONAL REGISTRY SYSTEM**

Registrations of international interests and sales are accomplished by electronic notice transmissions to the International Registry (IR) system located in Dublin, Ireland.<sup>14</sup>

Making registrations and checking the IR for existing registrations requires the entities involved to apply to the IR to become approved transacting user entities (referred to as TUEs).<sup>15</sup> In applying, a TUE designates an individual as its administrator who is its only official representative. The administrator's username and password are required to access the IR system. The IR charges \$200 for a one-year license. The IR also charges \$50 for registering an interest on an engine.

The administrator can request from the IR information on registrations or confirmation of the lack of any prior registrations. This information is shown on a priority search certificate issued by the IR for each aircraft engine.<sup>16</sup> Each certificate requires a payment of \$22.

An additional type of entity authorized by the IR to make TUE registrations and request information on prior registrations is a professional user entity (referred to as a PUE).<sup>17</sup> Those organizations are usually aircraft title services and law firms offering aviation services. They can be authorized by a TUE administrator to represent the TUE on specifically identified aircraft objects.

#### **HELICOPTER ENGINES**

The definition of aircraft engines in the CTT does not include engines installed on helicopters.<sup>18</sup> At the time an international interest is created, an aircraft engine subject to registration with the IR covers an engine that is not or is no longer installed on a helicopter. As a result, the practice is to register interests on the engine as both an international interest and a prospective international interest.<sup>19</sup> The latter would become effective on an engine that is removed from the helicopter.

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## FINAL THOUGHTS

If an aircraft engine is not large enough to be covered by the CTT, what protections are available to a purchaser or lender? There are no public records available in the United States to register ownership interests in small aircraft engines. Anyone representing a purchaser of small engines will need to do all appropriate due diligence. To perfect security interests in such engines, the lender must rely on the Uniform Commercial Code and file financing statements in the borrower's appropriate jurisdiction.

The best advice to a first-time user of the IR system is to retain a PUE to make any TUE registrations, determine if the aircraft engine is subject to any outstanding registrations and register any international interest or sale on the engine that is the subject of a financing or purchase.

## ABOUT THE AUTHORS



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## ENDNOTES

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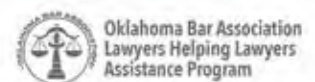
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# When an Aircraft Transaction Goes South, Fly Through FAA and International Registry Storms

By Tara M. Niendorf

**EVERYONE HOPES FOR THE BEST IN LIFE** – the perfect sourdough loaf, a glorious spring day, the best cup of coffee on this side of eternity and for every aircraft transaction to result in happy borrowers, gleeful lenders and satisfied lessees. Unfortunately, sometimes the loaf fails to rise, tornadoes spring up, the coffee bean bag is empty and a borrower or lessor defaults, leaving lenders and lessees in a lurch.

The savvy aircraft transactor, after briefly panicking, will almost certainly pull out the transaction binder that is provided at the conclusion of an aircraft transaction to double-check that any perfection and priority requirements were met. (Pro tip: Taking care at the outset of a transaction to ensure that all proper steps are taken is the best insurance money can buy!)

For aircraft, achieving proper perfection and priority involves a number of steps. These steps should be considered during the process of buying, financing or leasing the aircraft so that all expectations are met when closing occurs. Although not the subject of this article, any local law requirements, including Uniform Commercial Code (UCC) filings, should be satisfied at the time of closing.

## HISTORY OF AIRCRAFT REGULATION

Aircraft have additional perfection and priority requirements due to the overlap of interests between federal oversight and state and local considerations, as well as more recent treaty obligations. A brief history lesson is always helpful in these moments to sort everything out.

Prior to World War II, aviation lived in the realm of the military and hobbyists. Certainly, everyone knows of the Wright brothers' flight in December 1903,<sup>1</sup> the most famous among the many aviation pioneers.<sup>2</sup> By 1911, just eight years later, manned flight had progressed from 12 seconds of freedom to use in combat.<sup>3</sup> Aircraft of all kinds were used extensively throughout World War I.<sup>4</sup> Aircraft operations in World War II expanded further

with factories all across the world churning out fighters, bombers and transport planes that were needed for the war effort.

Of course, pilots (being pilots) found an excuse to fly after all the wreckage from the world wars was shuffled off. Venerable names such as Boeing, McDonnell Douglas and Ford capitalized on the growing interest in using aircraft for civilian transport.<sup>5</sup> After all, it's a big country to be traversed!

While the civilian transport market was developing, so was an awareness that some rules would be required to manage the burgeoning field of civil aviation. In 1926, in response to requests by lawmakers and the aviation community, a governmental system for aircraft registration and management was established.<sup>6</sup> Lawmakers allowed for title transfer and

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interest recordation for airframes in 1938, extending interest recordation to engines and propellers in 1948.<sup>7</sup> Simultaneously, global (great) minds were thinking alike. In 1944, the Convention on International Civil Aviation (ICAO) was signed, followed by ratification in 1947.<sup>8</sup>

Shortly after ICAO's establishment, Sen. A. S. "Mike" Monroney introduced legislation that resulted in the establishment of the Federal Aviation Administration (FAA)<sup>9</sup> via the Federal Aviation Act of 1958, as amended (the act).<sup>10</sup> As Sen. Monroney was the junior senator from Oklahoma at the time, the FAA's already-established Oklahoma City campus grew in importance, eventually bearing Sen. Monroney's name.<sup>11</sup>

### **THE FEDERAL AVIATION ADMINISTRATION**

Once the FAA was established, its responsibilities extended to a number of important functions.

Some of these included operational matters: Who can fly? For how long? With what kind of aircraft? Others included a safety element: How can aircraft talk to each other? How do planes avoid colliding in midair or during takeoff? How should a plane be maintained?

The FAA's mandate stretched to the formation of the Aircraft Registration Branch of the Civil Aviation Registry (FAA registry). The FAA registry is a repository for records pertaining to the sale, purchase and registration of airframes. As a related matter, its authority extends also to perfection through the recordation of interests against airframes, engines, propellers and spare parts maintained on or on behalf of U.S. certificated air carriers.<sup>12</sup>

By the time the FAA registry was established by the act, these important functions related to registration and perfection had meshed into other operational

and airworthiness oversight tasks handled under the umbrella of the FAA and were set forth in administrative regulations.<sup>13</sup>

### **THE CAPE TOWN CONVENTION**

Naturally, the aircraft industry has continued to evolve. As aircraft travel became a fact of everyday life and globalization in all areas, including financial investments, grew commonplace, parties began to seek a system that could provide a global framework for aircraft finance transactions. After many years, a new treaty called the "Cape Town Convention" sought the "enhancement and harmonization of private laws in respect of the financing, lease and sale of mobile equipment"<sup>14</sup> – including aircraft.

The United States ratified the Cape Town Convention with an entry into force on March 1, 2006.<sup>15</sup> To fulfill the mandate of the Cape Town Convention, an

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electronic registry known as the International Registry (IR) was established to record interests in airframes and engines, as well as registration of sales.

### NAVIGATING FAA AND IR REQUIREMENTS FOR AIRCRAFT TRANSACTIONS

It's important to note that not every piece of an aircraft can be perfected at the FAA registry or on the IR headquartered in Dublin, Ireland. FAA regulations limit eligibility for recordation based on the type, weight and capacity of airframes, engines and propellers and also include locations of spare parts for U.S. certificated air carriers.<sup>16</sup> The IR mirrors the weight and capacity limits but only applies to airframes and engines.<sup>17</sup>

So what does all this mean for an aviation transaction? If done right, a review of the transaction binder should reveal that all necessary local law, UCC and FAA filings occurred at the time of

closing, and any required IR registrations were made. Hooray! The sourdough loaf is rising, there's bright sunshine outside, more coffee beans are found and parties avoid being left in a lurch!

### HANDLING DEFAULTS AND DISPUTES

After the euphoria has ebbed, it's time to talk about actions. Aircraft transactions can be structured in numerous ways, and the position of the defaulting party impacts what filings need to be made at the FAA. A common scenario is that a *borrower* under a loan and aircraft security agreement defaults with no other interests perfected at the FAA. Another such example is if an aircraft that is financed with a perfected lease experiences a *lessee* default. Although less common, it's also possible for a *borrower* of a financed and leased aircraft to default, but the lessee has *not* defaulted.

In all the above scenarios, steps will first need to be taken to

resolve the issues under contractual arrangements and/or local laws before any filings can be made at the FAA. Although this jumps ahead a bit, it's helpful to identify the end objective from an FAA and IR perspective, as this should determine a practitioner's actions throughout the resolution of the issue under local law and/or the UCC.

Unfortunately for the non-defaulting party, the fact that the FAA accepted a document into its files or recorded it in the aircraft records cannot be relied on to support a validity or enforceability argument.<sup>18</sup> The FAA assumes that a document is valid on its face and will accept or record it so long as the FAA registry requirements for acceptance or recordation are met.<sup>19</sup> Therefore, a practitioner should not plan on using acceptance or recordation as support for a particular position in any local law or UCC proceeding.

If possible, parties have the option to resolve matters at the FAA using filings that would be utilized



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when no conflict between the parties exists. To clear an interest from the FAA records, a lender can file a release, and a lessor and lessee can jointly enter a lease termination, all while other matters are discussed and/or litigated. Otherwise, if a document indicating a unilateral action is placed in the FAA records, it is noted in subsequent title examinations and may impact the future marketability of the aircraft. Clearing the FAA records and discharging open IR interests should be a part of any settlement negotiations, and a bilateral agreement is the best possible outcome from a records perspective.

### REPOSSESSION

If, however, the parties are unable to settle their differences amicably, the FAA will require a certificate of repossession or a court order (should litigation be required to settle the issue) for the record. A certificate of repossession can be filed by a lessor or a lender, among others, and is self-certified.

A certificate of repossession follows a basic formula and identifies the collateral at issue, the parties involved and the perfected document (including recording information) that supports the filing of the certificate of repossession. It also affirmatively states that all required action under the governing local law was complied with and that notice was properly given to all interested parties.

In addition to the information described immediately above, drafting parties should include specific language to clear the open interest: a certificate of repossession from a lessor would terminate a lease, while a certificate of repossession from a lender

would extinguish junior interests, including liens, and state that the title is vested in the lender by virtue of the repossession action.

Court orders should be contemplated at the outset of any litigation because they, too, must contain information concerning the collateral at issue, the parties involved and the perfected document (including recording information) to the extent required by the FAA to link a particular court order with a particular aircraft. When a draft order is prepared, the information required by the FAA, extinguishing language, and a direction to discharge open IR interests should be included to ensure recordation and to act as evidence of the changed circumstances of the parties involved.

For anyone who has been required to return to a judge to ask a favor, please take special note of the court order requirements. Judges do not look favorably on a lawyer returning to request a modification to an already-issued order, but the FAA is not in the business of preserving the dignity of lawyers or judges. In order to avoid an uncomfortable yet necessary conversation, the best practice is to include all the necessary FAA information and IR actions in the very first pleading filed. This allows the FAA-required information and needed IR actions to exist in the court record and can supplement an otherwise unrecordable final order to allow for recordation at the FAA without requesting modifications from the issuing judge.<sup>20</sup>

### ENSURING PROPER FILINGS AND FINALIZING THE PROCESS

After this look at the end objective, it's time to soar back to the beginning. Once an event of

default occurs, it's important that an updated title examination be conducted at the FAA and on the IR. Although a title examination is commonly obtained at the outset of a transaction, an updated title examination will reveal what's happened since the transaction closed. Has a lender been added? Do lien claimants exist? Has the aircraft been sold without proper notice given? These questions and more impact what actions need to be taken before any FAA filing or IR registration can be made.

During the local law or UCC proceeding, having an updated title examination allows notice to be given to all claimants, including lien claimants or junior priority interest holders, as the certificate of repossession must contain representations that all interested parties have received notice and all appropriate actions have been taken under local law.

In the case of a repossessing lender, a certificate of repossession only covers the repossession after a borrower defaults, indicating that notice was properly given and that title vested in the lender at the end of the repossession action. The lender would still need to arrange for the filing of a release at the FAA registry and for registration of discharges of any open IR interests. For a lessor that already owns the aircraft, the title does not change and the certificate of repossession should terminate any open lease, but IR discharges still need to be made.

### FILING REQUIREMENTS AT THE FAA

It bears repeating that any filing at the FAA occurs after everything has been settled via local law or a UCC proceeding

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## As with many areas of life, the best defense is a good offense – doubly so in aircraft transactions!

or litigation, and the FAA filing is a confirmatory, self-certifying filing. After the dust settles, the prevailing party needs to look at the disposition of the aircraft. Who will own it after the claims are ended? Because the FAA is an owner registry, any registrant of an airframe needs to meet the citizenship requirements contained in U.S. law.<sup>21</sup> Note that the FAA does not track ownership of engines or propellers, so this requirement is limited to airframes.<sup>22</sup>

The lender, if it can meet citizenship requirements, is allowed to register the aircraft in its name. (A lessor, by virtue of its existing ownership, would not need to take this extra step.) The statement of ownership in the certificate of repossession, plus the filing of required registration documents, allows the lender to title the aircraft in the lender's name while it leases the aircraft or searches for a buyer.

A lender can also set up a pass-through sale, utilizing the certificate of repossession to evidence title, and then immediately selling to a third party (the third party would then be responsible for any additional documents to support registration or to deregister the aircraft). A pass-through sale benefits a lender because the lender is not obligated to meet the citizenship requirements. If there is a blameless lessee,

the lessee may be able to buy the aircraft if citizenship requirements are met, with the lender avoiding loss of time and income while a new buyer is being sought.

### CLEARING THE INTEREST ON THE INTERNATIONAL REGISTRY

Clearing the interest on the IR is a much quicker process, but it should not be completed until a filing at the FAA is made. The IR has broad, fixed categories of interests that can be registered. A lease or security agreement both fall under the heading of an "international interest." When making an international interest registration, there will always be a debtor, a creditor and a party that holds the right to discharge the international interest (RTD holder). In the case of a security agreement, the debtor is the borrower and the lender is the creditor and the RTD holder. For a lease, the debtor is the lessee, with the lessor functioning as the creditor and the RTD holder. Should financing occur after a lease, the lender often becomes the new RTD holder.

Any registrations on the IR that relate to a security agreement or a lease should be registered on the IR at the time the transaction commences. Some subsequent changes, such as amendments,

may result in additional FAA filings and corresponding IR registrations. At the time such registrations are made, entities must have active accounts on the IR.

Fortunately for lenders and lessors, the only entity required to have an active account for a discharge is the RTD holder. Entities that have lapsed into disabled status can be renewed in order to be active for a discharge.

With respect to the IR, if an interest has been released, the releasing party is obligated to make a corresponding discharge on the IR in order to avoid clouding another party's interest.<sup>23</sup> This requirement should be included in court orders. If a party refuses to make a discharge, an appeal can be made to the courts in Ireland. If the case is proved, the Irish court will issue an order to the registrar of the IR, and the registrar itself will make the discharge.<sup>24</sup> This is a lengthy and expensive process, one that is best avoided if possible.

### CONCLUSION

As with many areas of life, the best defense is a good offense – doubly so in aircraft transactions! Awareness of potential pitfalls and the ability to steer clear of issues save parties from turbulent times.

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### ABOUT THE AUTHOR



Tara M. Niendorf – a partner at Daugherty, Fowler, Peregrin, Haught & Jenson – focuses on representing clients

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issues. Ms. Niendorf’s expertise includes matters relating to the FAA regulations and aircraft registry, the Federal Transportation Code and the International Registry.

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21. 49 U.S.C. §44102; 14CFR §47.7.
22. 49 U.S.C. §441029(a) only speaks to eligibility of “aircraft” for registration; as defined in 49 U.S.C. §40102(a)(6), an aircraft “means any contrivance invented, used, or designed to navigate, or fly in, the air.” Anecdotally, this is because engines traditionally were considered part and parcel with the airframe and did not have any real value other than as a supporting part. Since the inception of manned flight, the value of engines has increased dramatically, but there is still no system at the FAA to track engine ownership.
23. *Official Commentary on the Cape Town Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment*, Sir Roy Goode (May 2022), para. 2.181.
24. See, e.g., analysis of *UniCredit Global Leasing Export GmbH v. BAL and Aviareto Limited* (2019), posted at <https://bit.ly/4cStZSP>.

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# Oklahoma Aircraft Excise Tax and State Aircraft Registration

By Chad Gilson

**ONE OF THE MANY ELEMENTS A CLIENT NEEDS** to prepare for early in the process of acquiring a new aircraft is the imposition of state taxes. While not nearly as much fun as selecting the interior configuration or preparing for the first trip, careful planning on the front end of a transaction can help avoid surprise tax bills and added fines and penalties. It will also help ensure the aircraft is available to the new owner as expected. In Oklahoma, aircraft owners pay an excise tax and must register the aircraft with the state.

## EXCISE TAX

Unlike most states, Oklahoma does not charge a sales tax on aircraft transactions. Instead, the state levies an excise tax of 3.25% of the purchase price of any aircraft when the transfer of legal ownership occurs in the state or the aircraft is used in the state.<sup>1</sup> This excise tax is in lieu of all other taxes on the transfer of ownership and is due at the time of initial registration of the aircraft in Oklahoma.<sup>2</sup> The state excise tax is also collected in lieu of county *ad valorem* property taxes.<sup>3</sup> It is important to note that the excise tax is applicable to both transactions that close while the aircraft is physically in Oklahoma as well as an aircraft brought into Oklahoma for use after being purchased by an owner. For evaluation purposes, “use” includes basing an aircraft in Oklahoma for

a period of 30 days or more.<sup>4</sup> So that nonresident aircraft owners who choose to have maintenance performed in Oklahoma are not assessed the excise tax, periods of time when an aircraft is retained in the state solely for maintenance are not considered “use.”<sup>5</sup>

It is a common practice in the industry to close an aircraft transaction in a state with a “fly-away exemption” to aircraft sales tax. Fly-away exemptions are available in many states, and the brokers, dealers and advisors who work with aircraft purchasers often prefer to close in these states for a predictable and sales-tax-free closing day. But because the Oklahoma excise tax will be due upon bringing the aircraft into the state after closing, an Oklahoma aircraft owner may close their transaction in Oklahoma, pay the excise tax and avoid movement

costs from the fly-away exemption closing location. This can be helpful if the parties are considering closing the sale in a state that otherwise has no connection to the transaction. If an aircraft is at an inspection facility as part of the prepurchase acceptance and the inspection facility is in a state with a fly-away exemption, this can be a convenient delivery location before moving the aircraft to Oklahoma after closing, where the new owner will pay the excise tax.

Beginning July 1, Oklahoma aircraft owners are now required to submit aircraft excise tax payments to Service Oklahoma through their online portal,<sup>6</sup> by mail<sup>7</sup> or at an in-person appointment.<sup>8</sup> Prior to this date, the excise tax was submitted directly to the Oklahoma Tax Commission.

While there may be compelling tax planning, business or liability

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reasons to own an aircraft that will be used in Oklahoma through an entity formed in another state, doing so does not, on its own, exempt the aircraft from the Oklahoma excise tax. Aircraft owners are sometimes tempted or advised to form a special purpose entity in a state with no aircraft sales tax, such as Montana.<sup>9</sup> Montana has become a popular state of registration for luxury automobiles and recreational vehicles for owners seeking to avoid sales tax,<sup>10</sup> and some Montana registered agent services specifically advertise registering an aircraft in Montana to “avoid potentially paying thousands in sales tax.”<sup>11</sup> But because the Oklahoma excise tax is assessed on the aircraft used in the state and not based on where the entity holding title to the aircraft was formed, using a special purpose entity in a tax-favorable jurisdiction does not create an exemption.

Oklahoma currently provides 17 legitimate exemptions to the aircraft excise tax.<sup>12</sup> Some of the more frequently used exemptions include inherited aircraft,<sup>13</sup> aircraft transferred between family members<sup>14</sup> and aircraft owned by a lender following a repossession.<sup>15</sup> Several of the exemptions apply to



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transfers of title between entities with common ownership or for the purposes of establishing a new entity,<sup>16</sup> but careful analysis should be made before determining if any specific transfer is exempt.

Oklahoma does have its own fly-away exemption to the excise tax,<sup>17</sup> but it is more limited than similar exemptions offered in other states. In Oklahoma, only an aircraft with a purchase price of at least \$2,500,000 being sold to a non-Oklahoma resident who will immediately remove the aircraft from the state is afforded the Oklahoma fly-away exemption.<sup>18</sup>

Perhaps the most sought-after exemption is for an aircraft used in commercial operations.<sup>19</sup> To qualify for this exemption, the aircraft must be purchased or used by a commercial airline. For this purpose, the definition of “commercial airline” includes both the common carriers most associated with that term as well as certificated carriers offering charter flights under Part 135 of the Federal Aviation Administration regulations.<sup>20</sup> Prior to 2018, there was no threshold for how much flight activity needed to be made for commercial purposes to qualify for this exemption. During that time, it was not unheard of for an aircraft owner to place an aircraft on a certificated carrier’s “operation specifications,” which would allow the carrier to use the aircraft for commercial purposes but actually conduct little to no commercial charter flights. Through the 2018 Aircraft Excise Tax Charter Fairness Act, the Oklahoma Legislature amended the exemption to require at least 50% of flights each year be conducted for commercial purposes.<sup>21</sup> These flights must be true third-party commercial operations.

Flights chartered by the aircraft owner or by the majority owner, if the title to the aircraft is held by an entity, are not considered commercial flights for the exemption calculation.<sup>22</sup> Aircraft owners who currently qualify for this exemption report their flight hours annually to Service Oklahoma to document their continued compliance.<sup>23</sup> If the aircraft owner or Service Oklahoma determines the exemption no longer applies because commercial flights were less than 50% during the year, the full excise tax is then due and payable.

If an owner takes their title to an aircraft outside of Oklahoma and later moves the aircraft into the state for use, the excise tax is due. Depending on the circumstances, a purchaser may be required to accept a title in a state where sales tax is due, and no exemption is available. Similarly, an aircraft owner may have initially based an aircraft outside Oklahoma and paid applicable sales and use taxes based on the initial home base. Oklahoma offers an exception to the excise tax if an amount greater than the Oklahoma aircraft excise tax has already been paid pursuant to the laws of another state.<sup>24</sup> If the amount paid to another state is less than what is due to Oklahoma as a result of moving the aircraft into the state, the amount paid to the other state may be deducted from the excise tax amount due to Oklahoma.

Failure to timely pay the excise tax can result in serious consequences to the aircraft owner, including seizure and sale by the state.<sup>25</sup> Short of a seizure, a delinquent taxpayer may find the state has placed a lien against the aircraft with the FAA.<sup>26</sup> Even if the state does not foreclose on the

aircraft under the lien, the existence of the lien has the practical effect of keeping the owner from selling the aircraft or receiving insurance proceeds until the past due tax is paid and the lien is released. Paying the excise tax 30 days or more after its due date will also cost the aircraft owner a penalty of 10% of the tax amount,<sup>27</sup> and the total delinquent amount accrues interest at the rate of 1.25% per month until paid in full.<sup>28</sup>

## OKLAHOMA AIRCRAFT REGISTRATION

In addition to the aircraft excise tax, Oklahoma aircraft owners must register their aircraft with Service Oklahoma annually.<sup>29</sup> Like the recent change in processing excise tax payments, state aircraft registration processing was moved from the Oklahoma Tax Commission to Service Oklahoma on July 1. After this date, all state aircraft registration documents, including renewals of current registration, will be sent to Service Oklahoma. This state registration is separate from the more familiar federal registration issued by the FAA under Part 47 of the FAA regulations, which is necessary to operate an aircraft under applicable federal and international law.<sup>30</sup> The Oklahoma aircraft registration functions more similarly to annual motor vehicle registration and is effectively an annual tax.

An Oklahoma aircraft owner should complete the relatively simple registration form<sup>31</sup> and return it to Service Oklahoma with the applicable registration fee and the applicable excise tax, if paying the initial registration fee, within 21 days of acquiring the aircraft or bringing the aircraft into the state for use. The registration fee ranges from \$30 for very small aircraft

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to \$22,500 for very large aircraft, with most falling somewhere in between. The fees are based on the type of propulsion system and the maximum gross weight of a particular aircraft. The current registration fees for a few popular aircraft models are: \$52.50 for a Textron 172, \$1,192.50 for a King Air 350 and \$4,500 for a Citation CJ4.<sup>32</sup> If an aircraft first becomes subject to the Oklahoma registration fee after April 1, the owner will pay a prorated amount.<sup>33</sup> Beginning with the second calendar year of ownership in Oklahoma, the full annual registration fee is due Jan. 1 of each year and is subject to a nominal penalty of 20 cents per day if paid through the end of February but jumps to a penalty equal to the missed registration fee if paid on March 1 or later.<sup>34</sup> In addition to paying twice the registration fee that would otherwise have been due, failure to timely register the aircraft may result in the state placing a lien against the aircraft, like is done for unpaid excise tax.<sup>35</sup>

While not as extensive as the list for the excise tax, a few exemptions to the Oklahoma aircraft registration fee are available. These include an aircraft owned by the manufacturer, an aircraft owned by a charitable organization and used for charitable purposes, an aircraft owned by a nonresident who has registered the aircraft with their home state and an aircraft not holding a valid certificate of airworthiness issued by the FAA.<sup>36</sup> Aircraft owners also receive a 10% annual reduction in the registration fee for the first five years after the aircraft is manufactured.<sup>37</sup> This reduction is based on the age of the aircraft rather than the amount of time it has been owned, so purchasers of used

aircraft should be aware of the applicable reduction before making the initial registration application. Owners of antique aircraft, as defined by the FAA,<sup>38</sup> and home-built aircraft pay only \$10 for their annual registration fee.<sup>39</sup>

## CONCLUSION

Compliance with the Oklahoma excise tax and aircraft registration requirements is not exceptionally complicated, especially when compared to other elements of the heavily regulated aviation industry, but it is vital. In practice, the Oklahoma Tax Commission was helpful and willing to answer questions regarding specific provisions and calculations when collecting the excise tax and processing aircraft registration was under their purview, and aircraft owners and practitioners can hope to receive the same treatment from Service Oklahoma going forward. With some attention to these issues before acquiring an aircraft, an Oklahoma aircraft owner can more easily include the payment and filing requirements in their closing plan and annual aircraft budget.

## ABOUT THE AUTHOR



Chad Gilson serves as an attorney at Gilchrist Aviation Law. He practices in various transactional matters related to the practice of aircraft title, registration, finance and leasing law.

## ENDNOTES

1. 68 O.S. §6002.
2. *Id.*
3. 68 O.S. §2805 (1).
4. 68 O.S. §6001.
5. *Id.* at §6001 (4).
6. <https://bit.ly/3MV0h56>.

7. P.O. Box 26940, Oklahoma City, OK 73126.
8. 6015 N. Classen Blvd., Building 4, Oklahoma City, OK 73118.
9. §67-3-201, 204, MCA.
10. David Ericson, "How the Wealthy use Montana to Avoid Luxury Vehicle Taxes," *Montana Standard*, (Sept. 8, 2023).
11. All Day \$49 Montana Registered Agent, <https://bit.ly/4g4W6B8> (last visited March 1, 2024).
12. 68 O.S. §6003.
13. *Id.* at §6003 (12).
14. *Id.* at §6003 (14).
15. *Id.* at §6003 (14).
16. *Id.* at §6003 (4), (6), (7), (8), (9) and (10).
17. *Id.* at §6003 (16).
18. *Id.*
19. *Id.* at §6003 (5). See *BMB Aircraft, LLC v. Oklahoma Tax Commission*, 369 P.3d 60 (2016), where appellant unsuccessfully attempted to avoid paying \$341,000 in excise tax on a new Cessna 560XL by leasing the aircraft to a company in the application process to become a certificated charter operator, but which company was not authorized to conduct commercial flights at the initiation of the lease.
20. 68 O.S. §6001 (2).
21. H.B. 2253, 2017 Leg., Reg. Sess. (Okla. 2017), amending 68 O.S. §6003.
22. 68 O.S. §6003(5).
23. *Id.*
24. *Id.* at §6003 (11).
25. 68 O.S. §6006.
26. 68 O.S. §234 and Encumbrances Against Specifically Identified Aircraft Engines and Propellers, 14 C.F.R. §49.41(2024).
27. 68 O.S. §217(C).
28. *Id.* at §217 (A).
29. 3 O.S. §254.
30. Aircraft Registration, 14 C.F.R. §47 (2024).
31. Service Oklahoma Form 13-34, available at <https://bit.ly/4ec7MRf>.
32. 3 O.S. §256 (A).
33. *Id.* at §256 (B) and Form 13-34, reducing the percentage due by 25% for each fiscal quarter with no registration.
34. Okla. Admin. Code §670:25-3-20(c)(2024).
35. Okla. Admin. Code §670:25-3-40; 60 OK §234; and 3 OK §257.
36. 3 O.S. §253.
37. Okla. Admin. Code §670:25-3-3(b).
38. Exhibition, antique and other aircraft: special rules, 14 C.F.R. §45.22 (2024).
39. Okla. Admin. Code §670:25-3-2(c).



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Jim Calloway and Julie Bays, OBA Management Assistance Program
- 11:00 a.m. Break**
- 11:10 a.m. Professional Liability Insurance and Risk Management**  
Phil Fraim, President, Oklahoma Attorneys Mutual Insurance Company
- 12:15 a.m. Lunch**  
Provided by Oklahoma Attorneys Mutual Insurance Company
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Julie Bays, OBA Management Assistance Program
- 12:50 p.m. Artificial Intelligence in the Legal Profession**  
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 1:50 p.m. Break**
- 2:00 p.m. Trust Accounting and Legal Ethics**  
Gina Hendryx, OBA General Counsel
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- 3:00 p.m. How to Succeed in Law Practice**  
Jim Calloway and Julie Bays, OBA Management Assistance Program
- 4:00 p.m. Adjourn**

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# Recent Developments for Corporations and LLCs

By Gary W. Derrick and Jacob L. Fanning

**T**HE CORPORATE LANDSCAPE in the United States is constantly changing. Each year, legislation is enacted at the state and federal levels that directly impacts Oklahoma businesses. Transactional lawyers are tasked with the difficult challenge of keeping abreast of these changes. This article will cover recent developments affecting Oklahoma practitioners in 2024.

At the state level, new legislation amends the Professional Entity Act<sup>1</sup> (PEA), the Oklahoma General Corporation Act<sup>2</sup> (OGCA) and the Oklahoma Limited Liability Company Act<sup>3</sup> (OLLCA). During the first regular session of the 59th Oklahoma Legislature, the Legislature considered Senate Bill 620<sup>4</sup> (SB 620) and Senate Bill 649<sup>5</sup> (SB 649, and with SB 620, they are referred to as “the bills”) authored by Sen. John Michael Montgomery, Rep. Jon Echols and Rep. Kevin McDugle. These bills were passed by the Oklahoma Senate in March 2023.<sup>6</sup> The bills were not voted on by the House in 2023, however, and were carried over to the second regular session of the Legislature (the 2024 session). During the 2024 session on April 17, the bills were passed by the Oklahoma House of Representatives.<sup>7</sup> On April 23,

Gov. Stitt signed the bills, which will take effect Nov. 1.

At the federal level, Congress passed the Corporate Transparency Act (CTA),<sup>8</sup> which became effective Jan. 1. Under the CTA, most existing and newly formed corporations, LLCs and other legal entities must report their beneficial ownership and management to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network.<sup>9</sup> The CTA is intended to make it more onerous for domestic and foreign individuals to operate shell companies for illicit purposes.<sup>10</sup> The reporting will impose a new and dramatic step in the formation of legal entities and may require lawyers who assist in the formation of legal entities to report personally as company applicants.

## PENDING CHANGES TO THE OKLAHOMA ACTS

### *The Professional Entity Act*

The Professional Entity Act, previously called the Professional Corporation Act, was adopted in 1961. At that time, few, if any, professionals practiced beyond their chosen state jurisdictional boundaries. That was still largely true in 1995 when the Professional Corporation Act became the PEA

with the inclusion of professional limited liability companies and limited partnerships. As a result, there was little need to accommodate foreign professional entities that might seek to qualify to do business in Oklahoma. Circumstances have since changed, and many professional entities are operating on a multijurisdictional basis. SB 620 addressed this need. It amended the PEA to account for foreign professional entities providing professional services in the state of Oklahoma.<sup>11</sup>

**Changes in definitions.** SB 620 expands the definition of “professional entity” to include a qualified foreign professional entity.<sup>12</sup> The bill also makes technical changes to correct a cross-reference to the Uniform Limited Partnership Act of 2010 and to clarify that a professional entity includes an entity formed for the purpose of owning a professional entity.<sup>13</sup>

**Formation and qualification of professional entities.** SB 620 retains the requirement that the individual or individuals forming a domestic professional entity must be managers<sup>14</sup> who are licensed or otherwise qualified to render professional services and applies this requirement to a

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foreign professional entity qualifying to practice in Oklahoma.<sup>15</sup> The qualifying document must include a certificate by the applicable regulatory board of the profession that the persons who will become the managers of the foreign professional entity and who will be responsible for the practice of the profession in Oklahoma are duly licensed or otherwise permitted in accordance with the provisions of Oklahoma's licensing laws to practice the profession.<sup>16</sup>

**Restrictions on ownership and management of domestic or foreign professional entities.** SB 620 continues the requirement that every manager of a domestic professional entity responsible for the professional services rendered by the entity must be duly licensed or otherwise permitted to provide professional services in Oklahoma.<sup>17</sup> The owners of a domestic professional entity must also be duly licensed or otherwise permitted to practice law in Oklahoma. For a foreign professional entity, an unlicensed person may be an owner or manager if the person is not practicing in Oklahoma.<sup>18</sup>

#### *Oklahoma General Corporation Act*

Oklahoma modeled its OGCA upon the Delaware General Corporation Law (DGCL) to foster reliance on the large body of Delaware case law, which offers persuasive guidance to Oklahoma courts and practitioners.<sup>19</sup> The amendments in SB 620 track earlier Delaware amendments to ensure continued guidance from the Delaware case law. SB 620 amends the OGCA to 1) permit a corporation by its charter to protect its corporate officers from certain monetary damages for breach of fiduciary duty, 2) expand certain rights of directors and officers regarding indemnification by the corporation, 3) authorize a corporation to purchase and maintain insurance through a captive insurance company, 4) clarify a variety of items relating to notice of meetings, consents of shareholders in lieu of meetings, mergers, consolidations, conversions and dissolutions and 5) expand the procedures relating to shareholder appraisal rights.

**Exculpation of officers and indemnification.** Since 1987, the OGCA, as in the DGCL, has permitted a corporation's certificate of

incorporation to include an exculpatory provision that eliminates or limits the personal liability of its directors to the corporation or its shareholders for breach of their fiduciary duties.<sup>20</sup> The exculpatory provision may not, however, eliminate or limit the directors' liability for 1) any breach of their duty of loyalty, 2) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, 3) unlawful dividends or share redemptions or 4) transactions from which the directors derived improper personal benefits.<sup>21</sup> The statute did not extend the liability limitation to officers, even though officers are subject to the same fiduciary duties as directors.<sup>22</sup>

Following a 2022 DGCL amendment, SB 620 amends Section 1006.B.7 of the OGCA to permit a corporation to extend the exculpatory provisions in its certificate of incorporation to protect its officers as well as directors.<sup>23</sup> The provision could eliminate or limit the personal liability of corporate officers for monetary damages for breach of their fiduciary duties. As with directors, the exculpatory

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provision may not protect officers 1) from any breach of their duty of loyalty to the corporation or its shareholders, 2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law or 3) for any transaction from which the officers derived improper personal benefits.<sup>24</sup> Officers also cannot be protected from derivative suits or claims brought by the board or shareholders on the corporation's behalf.<sup>25</sup> The exculpation provision will only protect them from direct claims brought by shareholders. The director's liability for unlawful dividends or share redemptions does not apply to officers since they have no role in authorizing dividends or redemptions.<sup>26</sup>

SB 620 extends the indemnification provisions of the OGCA. Section 1031 currently provides current and former directors and officers a right to indemnification if they are successful (on the merits or otherwise) in defending claims brought against them by reason of their conduct as directors and/or officers.<sup>27</sup> The amendment permits a corporation to indemnify other persons who are not current or former directors or officers if they are successful in defense of a proceeding referenced in subsections A and B of Section 1031.<sup>28</sup> Subsection F prohibits the elimination or impairment of a right to indemnification or advancement by amendment to the certificate of incorporation or the bylaws after the act or omission has occurred.<sup>29</sup> An amendment to Subsection F clarifies that such prohibition applies in the case of any subsequent repeal or elimination of the certificate of incorporation or the bylaws.<sup>30</sup>

**Insurance.** Section 1031.G of the OGCA permits a corporation to purchase and maintain insurance on behalf of its directors, officers, employees and other indemnifiable persons.<sup>31</sup> An amendment clarifies that the insurance may be provided through a captive insurance company.<sup>32</sup> The captive insurance may be procured under any "fronting" or other reinsurance arrangement, such as when a corporation obtains insurance from a third-party insurer but, through a reinsurance policy, all or part of the risk of loss is transferred to a captive insurer.<sup>33</sup>

The SB 620 amendments apply certain exclusions from coverage.<sup>34</sup> The captive insurer may not cover losses arising from 1) any personal profit or financial advantage to which the covered person was not legally entitled or 2) any deliberate criminal or deliberate fraudulent act if the proscribed conduct has been established in a final, nonappealable adjudication in the underlying proceeding in respect of the claim.<sup>35</sup> To address possible conflicts that may arise in determining coverage, the amendments require

the captive insurance policy to provide that any determination to make a payment under a captive insurance policy must be made either by an independent claims administrator or in accordance with the statutory procedures for determining indemnification.<sup>36</sup>

The amendments require captive insurance policies to provide that if any payment is to be made under the policy in connection with the dismissal or compromise of any action, suit or proceeding by or in the right of the corporation as to which notice is required to be given to shareholders under Title 12, Section 2023.1 of the Oklahoma Statutes, the corporation must include in the notice that a payment is proposed to be made under the captive insurance policy in connection with the dismissal or compromise.<sup>37</sup> This requirement affords the reviewing court and shareholders an opportunity to consider the use of assets of the captive insurance company in connection with a compromise of such actions, suits or proceedings.<sup>38</sup>

The amendments to Section 1031.G of the OGCA are not

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SB 620 amends Section 1014.3 to allow persons to use electronic signatures to document director, shareholder, member and incorporator consents and for signing and delivering those documents by electronic means.<sup>42</sup>

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intended to prohibit other forms of insurance that would have been permitted under the provisions of Section 1031.G that predate SB 620.

### **Electronic communications under the OGCA.**

*Signing and delivering corporate documents electronically:* Section 1014.3 of the OGCA was adopted in 2021 to broaden the use of electronic communication under the OGCA.<sup>39</sup> It provides that documents in certain transactions could be signed and delivered manually or electronically.<sup>40</sup> The terminology in Section 1014.3 is based on analogous provisions in Section 1075.2 and the Oklahoma Uniform Electronic Transactions Act.<sup>41</sup>

SB 620 amends Section 1014.3 to allow persons to use electronic signatures to document director, shareholder, member and incorporator consents and for signing and delivering those documents by electronic means.<sup>42</sup> This amendment supplements provisions that currently permit these consents by electronic means. A conforming amendment to Section 1014.3.A.3 requires that the electronic delivery of shareholder or member consents, and the electronic delivery of documents evidencing a proxy granted by a shareholder or member, must satisfy additional requirements set forth in Section 1073.C (with respect to consents) and Section 1057.C (with respect to proxies).<sup>43</sup>

*Director written consents:* To clarify the use of electronic communication, SB 620 amends Section 1027.F of the OGCA to permit a director to rely on Section 1014.3 of the OGCA, which confirms that electronic documents are writings for purposes of the OGCA, as a basis to document, sign and deliver a consent by electronic means.<sup>44</sup>

*Notice of meetings and adjourned meetings:* To address issues related to virtual meetings held via remote communication, SB 620 amends Section 1067.A of the OGCA to provide that a notice of a shareholder meeting may be given in any manner permitted by Section 1075.2 of the OGCA and Section 1067.C of the OGCA to provide that a virtual meeting via remote communication of shareholders may be adjourned due to technical failures during the meeting.<sup>45</sup> In such event, notice of when the meeting will reconvene need not be given to shareholders if the electronic network for the meeting, such as the website that shareholders and proxy holders visit to join the meeting, displays the information required by Section 1067.C about when and how the meeting will reconvene or if such information regarding the adjourned meeting is provided for in the notice of meeting.<sup>46</sup>

*Consent of shareholders in lieu of meetings:* Section 1073 is amended to expand the methods of delivery of consents given by electronic transmission.<sup>47</sup> The amendments provide that a consent need not bear the date of signature of the shareholder or member signing the consent.<sup>48</sup> The amendments also provide that the 60-day period for the delivery of consents starts on the first date a consent is delivered to the corporation.<sup>49</sup> The amendments also eliminate redundant terms, including references to consents given by telegram or cablegram because those methods of giving consents are included in the definition of electronic transmission.<sup>50</sup>

### **Mergers and conversions.**

*Holding company reorganization mergers:* Section 1081.G of the OGCA currently provides that no shareholder vote is required for

holding company reorganization mergers if certain conditions are met.<sup>51</sup> These are mergers in which a new holding company is created for an operating company, and shareholders of the former operating company become shareholders of the new holding company.<sup>52</sup> One present condition is that the new holding company's organizational documents and board composition must be identical to those of the premerger company.<sup>53</sup> Requiring identical organizational documents makes little sense when the holding company is a large, publicly held company or when the operating company is an LLC rather than a corporation. The SB 620 amendment relaxes this condition to require a shareholder vote only when the surviving company's organizational documents contain a provision that would have required shareholder approval if adopted immediately before the merger.<sup>54</sup> The board composition may be changed without a shareholder vote if the surviving company would be managed by a board owing fiduciary duties, which may be a board composed of corporate directors or LLC managers.<sup>55</sup>

### *Conversions:*

- **Conversions to Domestic Corporations:** Section 1090.4 of the OGCA currently provides that before a certificate of conversion to a domestic corporation may be filed, it must be approved in the manner set for in the entity's governing documents.<sup>56</sup> SB 620 amends Section 1090.4 of the OGCA to relax this requirement by providing that requisite approval shall be required before the time

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a certificate of conversion becomes effective.<sup>57</sup>

- Conversions of Domestic Corporations: Section 1090.5 of the OGCA currently requires the approval of the holders of all outstanding stock of a corporation before a corporation can be converted into another type of entity.<sup>58</sup> SB 620 amends Section 1090.5 of the OGCA to lower the voting requirement to approve a conversion to the holders of a majority of the outstanding stock entitled to vote on a conversion.<sup>59</sup>

**Appraisal rights.** SB 620 amends Section 1091 dealing with appraisal rights: 1) to permit a beneficial owner of stock to demand appraisal directly rather than requiring the record holder of the stock to make the demand on behalf of the beneficial owner;<sup>60</sup> 2) to provide appraisal rights to shareholders in connection with a conversion of the corporation to a foreign corporation or any other entity unless appraisal rights are denied under the “market out” exception set forth in amended Section 1091.B;<sup>61</sup> 3) to deny appraisal rights for shareholders in connection with mergers, consolidations or conversions adopted by shareholder consent to the same extent that appraisal rights are denied to such holders if one of those transactions is adopted at a shareholder meeting;<sup>62</sup> 4) to provide that, in lieu of including in a notice of appraisal rights, a copy of Section 1091 (and a copy of Section 1004.1, if one of the constituent corporations or the converting corporation is a nonstock corporation), a corporation may instead include in the notice information directing

the persons entitled to appraisal to a publicly available electronic resource to access Section 1091 (and Section 1004.1, if applicable);<sup>63</sup> and 5) to clarify how the expenses of a shareholder or beneficial owner who participated in an appraisal proceeding may be charged *pro rata* against the value of all the shares entitled to an appraisal award.<sup>64</sup>

**Dissolution:** The OGCA currently permits corporations to limit the duration of a corporation’s corporate existence by including a specified duration in its certificate of incorporation.<sup>65</sup> SB 620 amends sections 1096.F, 1096.G. and 1097.C. of the OGCA to provide that if a corporation includes a provision in its certificate of incorporation limiting the duration of the corporation’s existence to a specific date, the corporation must file a certificate of dissolution within 90 days of such date.<sup>66</sup>

#### *Oklahoma Limited Liability Company Act*

SB 649 amends the OLLCA to 1) provide for the formation of registered series LLCs and 2) permit the divisions of LLCs.<sup>67</sup>

**Registered series LLCs.** Series LLCs, while a unique form of LLC, have been permitted in Oklahoma since 2004.<sup>68</sup> Currently, the OLLCA permits the formation of distinct series within an LLC that designates itself as a series LLC within its articles of organization filed with the secretary of state.<sup>69</sup> Each series may have its own assets and liabilities, management and ownership, which is distinct from any other series within the series LLC.<sup>70</sup> Each series is shielded from the obligations of any other series.<sup>71</sup> After the series LLC’s initial filing with the secretary of state,

the separate series are formed by contract, and no secretary of state filing is required.<sup>72</sup> This lack of formal registration for protected series has led to problems in secured financing transactions and transfers of titled property.

SB 649 amends Section 2054.4 of the OLLCA to designate the existing series as a “protected” series, and they would continue without a separate secretary of state filing.<sup>73</sup> SB 649 adds Section 2054.5 to create “registered” series LLCs.<sup>74</sup> These series can be formed with a secretary of state filing that names the series LLC and the registered series and identifies its principal place of business and the name and address of its registered agent for service of process.<sup>75</sup> By filing with the secretary of state, the “registered series” will constitute a “registered organization” under Article 9 of the Oklahoma Uniform Commercial Code, which facilitates the recording of secured transactions.<sup>76</sup> The filing by the registered series also gives notice of its legal name, which will facilitate the conveyancing of titled property. Other provisions of the OLLCA are amended to authorize each registered series to be 1) dissolved independently, 2) merged with another entity, 3) converted into another entity and 4) revived.<sup>77</sup> Like LLCs, generally, a registered series would file an annual report and pay an annual fee.<sup>78</sup>

**Division of LLCs.** Currently, the OLLCA does not permit domestic LLCs to conduct division transactions.<sup>79</sup> Division statutes have been commonplace in states such as Texas and recently have become part of Delaware’s statutory scheme.<sup>80</sup> SB 649 adds Section 2054.9 to the OLLCA to enable LLCs to conduct division transactions.<sup>81</sup> The LLC undertaking

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Beginning this year, most existing legal entities in the U.S. and entities formed after 2023 must report their beneficial ownership and management to the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) under the CTA.

the division (termed “the dividing company”) may, but need not, survive the division.<sup>82</sup> If it does not survive, the dividing company is not deemed by default to have dissolved because of the division but instead simply ceases to exist as a separate entity.<sup>83</sup> The terms of the division must be set forth in a “plan of division,” which includes any terms under which interests in the dividing company will be canceled or converted into interests in another entity or the right to receive cash and how the assets and liabilities of the dividing company will be allocated in the division.<sup>84</sup> A division is effectuated by the dividing company’s filing of articles of division with the secretary of state and the simultaneous filing of articles of organization with the secretary of state for each LLC formed in the division.<sup>85</sup>

*Responsibilities Under the New Corporate Transparency Act*

Beginning this year, most existing legal entities in the U.S. and entities formed after 2023

must report their beneficial ownership and management to the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) under the CTA.

**Defining a reporting company and exemptions.**

*Reporting companies:* Subject to a few exemptions, legal entities formed with a secretary of state filing must report.<sup>86</sup> In addition, legal entities operating in the U.S., regardless of when or where they were formed, must also report.<sup>87</sup> This will include all domestic corporations, LLCs and limited partnerships and foreign entities doing business in the U.S.<sup>88</sup> FinCEN estimates that there are approximately 30 million entities currently operating within the U.S. that will be subject to reporting, and over three million new entities are formed annually that will be subject to reporting.<sup>89</sup>

The definition does not include general partnerships, the formation of which does not require a secretary of state filing but does include limited partnerships,

limited liability partnerships and limited liability limited partnerships. It is unclear whether the definition would include entities such as business trusts, which are not formed by a secretary of state filing.<sup>90</sup> A separate series within a series LLC, unless a registered series, is not formed by a secretary of state filing.

*Reporting company exemptions:* Exempt from the definition of reporting company are 23 types of entities, most of which are currently subject to extensive regulation or are otherwise required to report their beneficial ownership information.<sup>91</sup> Those exemptions include, among others, Securities and Exchange Commission reporting companies, government authorities, public utilities, investment companies and advisors, banks, bank holding companies, credit unions, insurance companies and tax-exempt entities.<sup>92</sup> Three exemptions are of particular note: “large operating compan[ies],” “inactive entit[ies],” and wholly-owned subsidiaries of exempt entities.<sup>93</sup>

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**Defining “beneficial owner” and a “company applicant.”** Every reporting company will have at least one “beneficial owner” and “company applicant” whose personal information must be submitted to FinCEN along with that of the reporting company.

*Beneficial owner (including managers):* Every reporting company is required to report certain information about each of its beneficial owners.<sup>94</sup> Subject to a few exceptions,<sup>95</sup> a beneficial owner is defined as any individual who either 1) exercises substantial control<sup>96</sup> over the reporting company or 2) owns or controls at least 25%<sup>97</sup> of the reporting company’s ownership interests.<sup>98</sup>

*Company applicant:* Every reporting company is also required to report certain information about each of its company applicants.<sup>99</sup> A company applicant is defined as any individual who files an application to form an entity or registers an entity to do business in the U.S.<sup>100</sup> Under the rules, an applicant also includes “any individual who is primarily responsible for directing or controlling the

formation document.<sup>101</sup> As defined, a company applicant may include the lawyer who prepared the governing documents for the entity.<sup>102</sup>

**Required disclosures.** A reporting company must disclose information about itself, its beneficial owners, its management and the company applicants to FinCEN.<sup>103</sup> The reporting is to be done through an online, secured portal.<sup>104</sup> If the filer anticipates multiple filings, it can obtain a FinCEN identifier number (FIN) by providing the required information and simply submit the FIN in lieu of the more extensive reporting.<sup>105</sup>

*Reporting company:* For reporting companies, the following information concerning the reporting company must be included in the beneficial ownership report filed by the reporting company to the FinCEN database: 1) the full name of the reporting company, 2) any trade name or “doing business as” name, 3) the business street address, 4) the state or tribal jurisdiction of formation<sup>106</sup> and 5) the IRS-issued taxpayer identification number (TIN) (including the

reporting company’s employer identification number or EIN).<sup>107</sup>

*Beneficial owners, management and company applicants:* Each individual who is a beneficial owner of such reporting company, management (if exercising substantial control) or a company applicant must submit an initial report to FinCEN that includes:

- the full legal name of the individual;
- the date of birth of the individual;
- the complete current address consisting of:
  - in the case of a company applicant, the company applicant’s business street address of such business or
  - in the case of a beneficial owner or management, the residential street address the individual uses for tax residency purposes;
- a unique identifying number from one of the following documents:

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The years 2022 and 2023 saw several critical pieces of legislation at the state and federal levels that will change the way Oklahoma businesses operate. Practitioners, as a result, are challenged to respond to this changing corporate landscape.

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- a passport,
- a state driver’s license *or*
- other identification issued to the individual by a state, local government or Indian tribe; and
- an image of the document showing the unique identifying number.<sup>108</sup>

### **Due dates for reporting information.**

*Initial reporting requirements:* Reporting companies formed or registered within one year after the effective date must submit the required beneficial ownership report within 90 calendar days of its formation date.<sup>109</sup> Reporting companies formed or registered after Jan. 1, 2025, must submit the required beneficial ownership report within 30 calendar days of its formation date.<sup>110</sup> Reporting companies formed or registered before the effective date must submit to FinCEN the required beneficial ownership report not later than two years after the effective date.<sup>111</sup> Exempt entities are required to submit the beneficial ownership report when such entity no longer meets such exemption criteria.<sup>112</sup>

*Continuing reporting requirements:* Reporting companies are required to update any beneficial ownership changes within 30 days after the change.<sup>113</sup>

**Access to the reported information.** FinCEN will store the information collected under the CTA in a secure private database.<sup>114</sup> This database will not be publicly available. The beneficial ownership information will be available from a request only by 1) a federal law enforcement agency, 2) a state, local or tribal law enforcement agency (if authorized by a court order), 3) a federal

agency on behalf of a foreign country (if the request is under an international agreement) or 4) a financial institution for customer due diligence purposes, but only if authorized by the reporting company.<sup>115</sup> The information in the database of beneficial owners will be available to members of law enforcement without the requirement of a warrant or other Fourth Amendment protections.<sup>116</sup> Since banks and other financial institutions rely on the database to satisfy their “know your customer” requirements, one should anticipate that they will require their customer’s consent.

### **Penalties for noncompliance.**

The CTA applies civil penalties of not more than \$500 for each day a violation continues, fines of up to \$10,000 and imprisonment of up to two years for willful or fraudulent violations.<sup>117</sup> The CTA contains a safe harbor provision allowing any person who submits inaccurate beneficial ownership information to file a correct beneficial ownership report within 14 calendar days after the date the reporting company becomes aware of the inaccuracy if that person 1) was not trying to evade the reporting requirement, 2) had no knowledge of the inaccuracy and 3) corrects the inaccuracy within 90 calendar days after the report is submitted.<sup>118</sup>

### **Litigation against the CTA.**

Given the wide impact of the CTA, it is not surprising that it has attracted litigants seeking to stop its implementation. The first shot came March 1, 2024, when the U.S. District Court for the Northern District of Alabama ruled that the CTA was unconstitutional.<sup>119</sup> The case was brought by the National Small Business Association (NSBA) and one of its individual

members. Plaintiffs asserted that the beneficial ownership reporting requirements exceeded congressional authority under Article I of the U.S. Constitution and violated the First, Fourth, Fifth, Ninth and 10th amendments. The court agreed generally, rejecting the defendant’s arguments that the CTA is authorized under the foreign affairs powers, the commerce clause and the taxing powers. The court did not rule specifically whether the CTA violates one or more of the enumerated amendments. In connection with the ruling, the court enjoined the federal government from enforcing the CTA as to the plaintiffs in the case, NSBA members as of March 1, 2024, and reporting companies and company applicants within the Northern District. The injunction does not extend beyond the plaintiffs or the Northern District. The defendant has appealed.

FinCEN responded that it suspended enforcement against the plaintiffs and members of the NSBA as of March 1.<sup>120</sup> It will continue to enforce the CTA for all other reporting companies and company applicants.<sup>121</sup> While several other cases are pending, no other court has yet ruled on the allegations.

Reporting companies not covered by the NSBA injunction, formed in 2024 and subject to the 90-day filing window, should presume they must file. Reporting companies formed before 2024 have until Dec. 31 to file and may wish to wait and see how these matters are resolved.

### **CONCLUSION**

The years 2022 and 2023 saw several critical pieces of legislation at the state and federal levels that will change the way Oklahoma

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businesses operate. Practitioners, as a result, are challenged to respond to this changing corporate landscape. In preparation for SB 620 and SB 649 taking effect and the new obligations of reporting companies under the CTA, practitioners will want to ensure they are proactively addressing the proposed amendments to the OGCA and OLLCA and can adequately respond to the upcoming requirements imposed by the CTA.

## ABOUT THE AUTHORS



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## ENDNOTES

- 18 O.S. §§800 *et seq.*
- Id.* at §§1001 *et seq.*
- Id.* at §§2000 *et seq.*
- SB 620, 2023 Leg., 1st Sess. (Okla. 2023).
- SB 649, 2023 Leg., 1st Sess. (Okla. 2023).
- SB 620 passed the Senate with 40 yes votes, three no votes and five abstentions. SB 649 passed the Senate with 47 yes votes and one abstention.
- SB 620 passed the House with 90 yes votes, four no votes and seven abstentions. SB 649 passed the House with 88 yes votes, three no votes and 10 abstentions.
- National Defense Authorization Act for Fiscal Year 2021 (NDAA), <https://bit.ly/4gq6weY>.
- NDAA §6403(a).
- See Final Rule Summary.
- Professional services are defined in the PEA to include personal services rendered by: physicians, surgeons or doctors of medicine, osteopathic physicians or surgeons, chiropractic physicians, podiatric physicians, optometrists, veterinarians, architects, attorneys, dentists, certified public

- accountants, psychologists, physical therapists, registered nurses, professional engineers, land surveyors, occupational therapists, speech pathologists, audiologists, registered pharmacists, licensed perfusionists, licensed professional counselors, licensed marital and family therapists, dietitians, social workers, licensed alcohol and drug counselors, licensed behavioral practitioners and certified real estate appraisers. 18 O.S. §803.6.
- S.B. 620, 2023 Leg., 1st Sess. §1 (Okla. 2023).
  - Id.*
  - The term “manager” is generic and includes a director or officer in the case of a corporation, the general partner in the case of a limited partnership, a manager in the case of a limited liability company. 18 O.S. §803.4.
  - S.B. 620, 2023 Leg., 1st Sess. §2 (Okla. 2023).
  - Id.*
  - Id.* at §6. An officer without managerial authority for the professional services, such as a corporate secretary, need not be licensed.
  - Id.* at §5.
  - See *Woolf v. Universal Fidelity Life Insurance Company*, 849 P.2d 1093, 1095 (Okla. Ct. App. 1992) (holding that since the OGCA is based on the DGCL, the OGCA should be interpreted in accordance with Delaware decisions); see also, *Price v. Southwestern Bell Tel. Co.*, 812 P.2d 1355 (Okla. 1991) (holding that when one state adopts the uniform laws or statutes of another state, the latter state’s decisions are persuasive in the former state’s construction of such laws).
  - 18 O.S. §1006.B.7. By requiring the exculpatory provisions, if any, to be in the certificate of incorporation, the statute ensures that the shareholders have approved the liability limitation since the shareholders must adopt the original certificate of incorporation with the limitation or approve any amendment adding the limitation.
  - Id.*
  - Gantler v. Stephens*, 965 A.2d 695, 709 (Del. 2009) (holding that officers are subject to identical duties as directors).
  - S.B. 620, 2023 Leg., 1st Sess. §10 (Okla. 2023).
  - Id.*
  - Id.*
  - Id.* The exculpatory provision would not apply to any actions or omissions of officers of a corporation occurring before the adoption of the exculpatory provision.
  - 18 O.S. §1031.C.
  - S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023). A corporation may rely on Section 1031.F to make this permissive indemnification a mandatory right for these other persons, such as under a provision in the certificate of incorporation, the bylaws, an agreement or vote of shareholders or disinterested directors. See *Cochran v. Stifel Financial Corp.*, Del. Ch. C.A. No. 17350 (Dec. 13, 2000), *aff’d in part and reversed in part*, both on unrelated grounds, 809 A.2d 555 (Del. 2002).
  - 18 O.S. §1031.F.
  - S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023).
  - 18 O.S. §1031.G.
  - S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023). A “captive insurance company” is an insurer directly or indirectly owned, controlled and funded by the parent corporation.
  - S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023).
  - Id.*
  - Id.* The proscribed conduct in the amendment to 18 O.S. §1031.G is narrower than the proscribed conduct under the exculpatory provisions of

- Section 1006.B.7. The amendments to Section 1031.G affirm that directors and officers may be covered under a captive insurance policy for certain liabilities that are not exculpable under Section 1006.B.7. The policies could include coverage for nonexculpated liabilities stemming from so-called *Caremark* or oversight claims if there is not otherwise a finding that the directors or officers knowingly caused the corporation to violate the law.
- S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023). The procedures are set forth in paragraphs 1 through 4 of Subsection D of 18 O.S. §1031.
  - S.B. 620, 2023 Leg., 1st Sess. §17 (Okla. 2023).
  - Id.*
  - See 18 O.S. §1014.3.
  - Id.*
  - 12A O.S. §§15-101 *et seq.*
  - S.B. 620, 2023 Leg., 1st Sess. §13 (Okla. 2023).
  - Id.*
  - Id.* at §16; 18 O.S. §1014.3.
  - S.B. 620, 2023 Leg., 1st Sess. §27 (Okla. 2023).
  - Id.*
  - Id.* at §28.
  - Id.*
  - Id.*
  - Id.*
  - 18 O.S. §1081.G.
  - Id.*
  - Id.*
  - S.B. 620, 2023 Leg., 1st Sess. §30 (Okla. 2023).
  - Id.* at §30.
  - 18 O.S. §1090.4.
  - S.B. 620, 2023 Leg., 1st Sess. §31 (Okla. 2023).
  - 18 O.S. §1090.5.
  - S.B. 620, 2023 Leg., 1st Sess. §32 (Okla. 2023). If the conversion is to a partnership with one or more general partners, approval of each shareholder who will become a general partner will be required. *Id.*
  - Id.* at §33. A beneficial owner must comply with the requirements of 18 O.S. §1091.D(3) to demand appraisal, including its requirement that the beneficial owner who demanded appraisal directly, not the record owner, continuously maintains beneficial ownership of the shares.
  - Id.*
  - Id.*
  - Id.* An electronic resource would include the website maintained on behalf of the state of Oklahoma on which those statutes are posted.
  - Id.*
  - 18 O.S. §1006.B(5).
  - S.B. 620, 2023 Leg., 1st Sess. §§34, 35 (Okla. 2023); 18 O.S. §§1096.F., 1096.G., 1097.C.
  - S.B. 649, 2023 Leg., 1st Sess. (Okla. 2023).
  - 18 O.S. §2054.4.
  - Id.* at §2005.B.
  - Id.* at §2054.4.
  - Id.*
  - Id.*
  - S.B. 649, 2023 Leg., 1st Sess. §13 (Okla. 2023).
  - Id.* at §14.
  - Id.*
  - See 12A O.S. 1-9-102(a)(71).
  - S.B. 649, 2023 Leg., 1st Sess. §13 (Okla. 2023).
  - An annual fee of \$25 must be paid to the secretary of state for each registered series LLC. 18 O.S. §2055.2.
  - A division transaction permits companies a simple mechanism to “divide” into multiple LLCs and to allocate its assets and liabilities among those LLCs without effecting a transfer for purposes of Oklahoma law.

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80. See Tex. Bus. Org. Code. §101.633(a)(1) (A); Del. C. 6 §18-217.

81. S.B. 649, 2023 Leg., 1st Sess. §18 (Okla. 2023).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. NDAA §6403(a)(11)(A); 31 C.F.R. §1010.380(c)(1). The definition includes legal entities formed or operating under Tribal authority.

87. NDAA §6403(a)(11)(A); 31 C.F.R. §1010.380(c)(1).

88. NDAA 6403(a)(11)(A); 31 C.F.R. §1010.380(c)(1).

89. See Notice of Proposed Rulemaking (NPRM), Section IV.D.i.

90. The NPRM indicates that business trusts (aka statutory trusts) would be included, apparently on the assumption that business trusts are created by statute and a secretary of state filing. See NPRM, Section IV.D.i. That is true in Delaware but not in many other states, including Oklahoma. An Oklahoma business trust is formed by the filing of the trust instrument (or a memorandum of trust) with the county clerk of the county in which the trust is located and a duplicate filing with the Oklahoma Tax Commission. See 68 O.S. §1211.

91. NDAA §6403(a)(11)(B); 31 C.F.R. §1010.380(c)(2).

92. NDAA §6403(a)(11)(B); 31 C.F.R. §1010.380(c)(2). The CTA also includes an option for the secretary of the treasury, with the written concurrence of the attorney general and the secretary of homeland security, to exclude by regulation additional types of entities. NDAA §6403(a)(11)(B)(xxiv). FinCEN stated in the NPRM that it does not anticipate additional exemptions beyond those specified by the CTA. NPRM, Section III.

93. NDAA §6403(a)(11)(B); 31 C.F.R. §1010.380(c)(2). A large operating company is defined as an entity that 1) employs more than 20 full-time employees in the United States, 2) has an operating presence at a physical office in the United States and 3) filed in the previous year federal income tax returns demonstrating more than \$5 million in gross receipts or sales (net of returns and allowances) on the entity's annual income tax returns, excluding gross receipts or sales from sources outside the United States, as determined under federal income tax principles. *Id.* The large operating company exemption will not apply to newly formed companies. It will provide relief for some existing companies. *Id.* Inactive entities are defined as those that 1) were in existence before Jan. 1, 2020, 2) are no longer engaged in active business, 3) do not hold any assets (including ownership interests in other entities), 4) are not owned by a foreign person, 5) whose ownership has not changed during the immediately preceding 12-month period and 6) has not sent or received more than \$1,000 in the immediately preceding 12-month period. *Id.*

94. Lawyers should note that in most instances, their client is the reporting company and not its owners, officers or managers. See 5 O.S. Ch.1, App. 3-A, Oklahoma Rules of Professional Conduct, 1.13(a) (Duty to the Organization). The distinction is important because the lawyers' duties, such as the duty of confidentiality, are owed to the company, not the individuals.

95. The regulations also provide five exceptions to the definition of beneficial owners: relating to

minor children, nominees or other intermediaries, employees, inheritors and creditors. NDAA §6403(a)(3)(B); 31 C.F.R. §1010.380(d)(3).

96. Anyone who exercises direct or indirect substantial control over a reporting company is classified as a beneficial owner. NDAA §6403(a)(3)(A)(i); 31 C.F.R. §1010.380(d)(1)(i). A beneficial owner exercises direct or indirect substantial control over a reporting company by undertaking any of the following actions or retaining the following rights: 1) majority ownership of the reporting company, 2) substantial control rights in conjunction with certain financing arrangements, 3) controls intermediaries that retain the ability to exercise substantial control over the reporting company, 4) serving as a senior officer or board member, 5) the authority to appoint or remove the reporting company's senior officers or a majority or dominant minority of the reporting company's Board of Directors (or similar body), 6) the ability to direct, determine, decide or exercise substantial influence over important matters affecting the reporting company or 7) exercising any other form of substantial control over the reporting company whether through financial or business relationship or any other contract, understanding or relationship. 31 C.F.R. §1010.380(d)(1)(ii).

97. Anyone who owns or controls at least 25% of the reporting company's ownership interests is classified as a beneficial owner. NDAA §6403(a)(3)(A)(ii); 31 C.F.R. §1010.380(d). The percentage of such ownership interests that an individual owns or controls is determined by aggregating all of the individual's ownership interests in comparison to the undiluted ownership interests of the company. 31 C.F.R. §1010.380(d)(2)(iii). The rules do not provide ways to calculate beneficial ownership on a pass-through basis for entities with multiple layers of investors.

98. The scope of ownership interests is broad and includes all ownership interests of any class or type, including traditional equity, such as shares in a corporation or interests in an LLC, and instruments that give rise to equity, such as profits interests, convertible debt, warrants or rights, or other options or privileges to acquire equity, capital or other interests in a reporting company. *Id.* at §1010.380(d)(2). The regulations give a nonexhaustive list of examples to further emphasize that an individual can own or control ownership interests through a variety of means. *Id.* at §1010.380(d)(2)(ii). For example, in the context of trust ownership, an individual may own or control ownership interests by way of the individual's position as a grantor or settlor, beneficiary, trustee or another individual with authority to dispose of trust assets. *Id.*

99. NDAA §6403(b)(2)(A); 31 C.F.R. §1010.380(b)(ii).

100. NDAA §6403(a)(2); 31 C.F.R. §1010.380(e).

101. 31 C.F.R. §1010.380(e)(3). This definition may include employees of business formation services, law firms or associates, agents or family members who file formation documentation on behalf of another individual.

102. The lawyers assisting in entity formation must decide who will file the information: the reporting company or the lawyers. If the lawyers file, they should retain supporting documentation for the information reported to FinCEN.

103. NDAA §6403(b)(2)(A); 31 C.F.R. §1010.380(b).

104. The portal is located at <https://boiefiling.fincen.gov>.

105. NDAA §6403(b)(3)(A); 31 C.F.R. §1010.380(b)(1)(ii). Updates to the initial submission should apply to all reports by the FIN filer, which would avoid the filing of multiple updated reports.

106. For a foreign reporting company, the state or tribal jurisdiction where such company first registers. 31 C.F.R. §1010.380(b)(1)(i)(E).

107. *Id.* at §1010.380(b)(1)(i).

108. *Id.* at §1010.380(b)(1)(ii).

109. *Id.* at §1010.380(a)(1)(i)(A).

110. *Id.* at §1010.380(a)(1)(i)(B).

111. *Id.* at §1010.380(a)(1)(iii).

112. *Id.* at §1010.380(a)(2).

113. *Id.* at §1010.380(a)(2)(i). Such changes include 1) qualifying for an exemption subsequent to the filing, 2) changes to address for existing beneficial owners or company applicants and 3) adding new beneficial owners or company applicants.

114. NDAA §6403(c)(3); see also Beneficial Ownership Information, Frequently Asked Questions, A.3. (Jan. 4, 2024), [www.fincen.gov/boi](http://www.fincen.gov/boi).

115. *Id.* at §6403(c)(2)(B).

116. *Id.* at §6403(c)(2)(B).

117. *Id.* at §6403(h)(3)(A).

118. *Id.* at §6403(h)(3)(C); see also 31 C.F.R. §1010.380(a)(3). A corrected report filed within this 14-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which an inaccurate report is filed. 31 C.F.R. §1010.380(a)(3).

119. *National Small Business United v. Yellen*, Case No. 5:22-cv-1448-LCB (E. Div., N. D., Ala.). Other cases against the CTA include *Gargasch v. Yellen*, Case No. 1:23-cv-02468 (N.D. Ohio); *Boyle v. Yellen*, Case No. 2:24-cv-00081-LE (W.D. Maine); *Small Business Ass'n of Michigan v. Yellen*, Case No. 1:24-cv-00314 (W.D. Mich.); *Black Economic Council of Mass. v. Yellen*, Case No. 1:24-cv-11411 (D.Mass.); and *Texas Top Cop Shop, Inc. v. Garland*, Case No. 4:24-cv-00078 (E.D. Texas). Three bills have been introduced to Congress that would amend or abolish the CTA: H.R. 4035, the "Protecting Small Business Information Act of 2023"; H.R. 5119, the "Protect Small Business and Prevent Illicit Financial Activity Act"; and H.R. 8147/S. 4297, the "Repealing Big Brother Overreach Act."

120. Notice Regarding *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.) (March 11, 2024), <https://bit.ly/3XDxJlq>.

121. *Id.*

# Women in Law Conference Highlights

**T**HE OBA WOMEN IN LAW SECTION HOSTED THE ANNUAL WOMEN IN LAW CONFERENCE on Sept. 20 at the historic Mayo Hotel in Tulsa. This year's sold-out event featured spectacular speakers, fascinating topics and recognition of the 2024 Mona Salyer Lambird Spotlight Award recipients. Congratulations to section leadership on the success of this year's conference!



*Above: Panelists participating in the "Career Transitions" panel included (from left) Julie Pittman, Christy Caves, Valery Giebel, Kim Tran and Monica Ybarra Weedn. The panel was moderated by Cheryl Jackson.*

*Left: The 2024 Women in Law Conference, hosted by the OBA Women in Law Section, was a sold-out event held at the Mayo Hotel in downtown Tulsa.*



*This year's recipients of the Mona Salyer Lambird Spotlight Awards were recognized during the event luncheon. This year's honorees are (front row from left) Emma Rolls, Judge Loretta F. Radford, Marshal Sharon Schooley, (back row from left) Taylor Henderson and Janet Johnson.*



*Asha Rangappa (left), senior lecturer at the Yale University Jackson School of Global Affairs, served as the luncheon keynote speaker after her introduction by Women in Law Section Chair Rhiannon Thoreson.*



*The Judicial Panel included (from left) Judge Rebecca Nightingale, Judge Tracy Priddy, Judge Stacie Hixon and Judge Kirsten Pace. The panel was moderated by Rhiannon Thoreson.*

# Leadership Academy Highlights

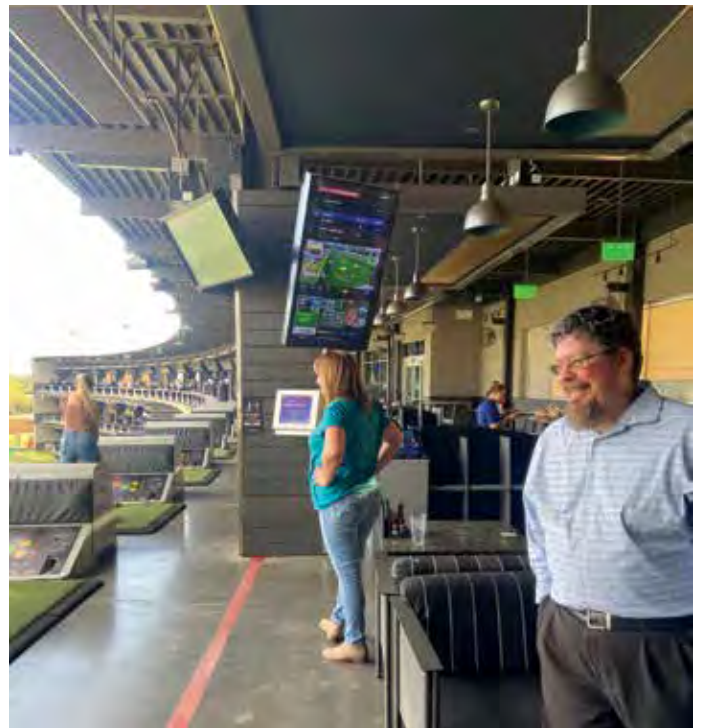
**T**HE EIGHTH CLASS OF THE OBA LEADERSHIP ACADEMY met on Sept. 19 and 20 for their final session before their Nov. 15 graduation. During this two-day session, participants heard from several inspirational leaders while networking and learning.



*On Thursday, Sept. 19, Leadership Academy participants attended sessions throughout the day at the Oklahoma Bar Center, hearing from speakers U.S. Magistrate Judge Suzanne Mitchell and attorney and PGA golfer Herb Rubenstein.*



*Following their Friday sessions, the Leadership Academy group attended a dog adoption and CLE event at Bar K in Oklahoma City. Pictured, OBA Animal Law Section Chair Gary Maxey presents during the CLE portion of the event, which was jointly hosted by the OBA Animal Law Section and the OBA Young Lawyers Division.*



*On Thursday, Sept. 19, Leadership Academy participants met at Topgolf in Oklahoma City. Pictured, Courtney Driskell lines up her swing as Sherry Erb and Brian Candelaria look on.*



*On Friday morning, Sept. 20, the group met at the Oklahoma Judicial Center in Oklahoma City. Justice Yvonne Kauger gave the group a tour of the Judicial Center, giving a history of the center and discussing the artwork hanging throughout the building.*



While at the Judicial Center, members of the Leadership Academy heard from Chief Justice M. John Kane IV, who gave the group inspiration on leadership. “Understand who you’re leading, and know yourself,” Chief Justice Kane said. “As far as self-knowledge, you’ve got to figure out what is best about yourself – what it is that helps you rise above others. If you work on being the best you, you’ve got a chance.”



# Outstanding Senior Law School Student Awards

**THE OKLAHOMA BAR** Association annually recognizes the outstanding senior law school student from each of the state's three law schools. The student honorees are selected by law school faculty and administration. In 2024, these students will receive their awards during ceremonies coordinated by their individual law school.



**TU College of Law, Michael Carson**

Michael Carson is a third-year law student graduating in December.

Prior to beginning law school, he graduated *summa cum laude* from TU with a double major in accounting and energy management and a minor in economics. In law school, he has clerked throughout the summers and part time during the school years at multiple law firms within the Tulsa area. During the summer of his 1L year, he also passed all sections of the certified public accountant (CPA) exam on the first attempt, and he anticipates having his CPA license soon once he finishes the required work experience for licensure.

Mr. Carson has been awarded multiple CALI awards for earning

the highest grade in his legal courses, and he has served as an associate editor and business manager of the *Tulsa Law Review*. He plans to practice transactional business law in Tulsa after graduating and passing the Oklahoma bar exam.



**OCU School of Law, Caroline Rowland**

Caroline Rowland is a third-year law student at the OCU School of Law and an Oklahoma City

native. She has been on the dean's list and the faculty honor roll and has been awarded six CALI Excellence for the Future awards. Ms. Rowland is the editor-in-chief of the *Oklahoma City University Law Review*, a member of the Native American Law Student Association moot court team, the treasurer of the Native American Law Student Association, an academic fellow serving as a teaching assistant to law professors for civil procedure and constitutional law and a member of the William J. Holloway Jr. American Inn of Court.

Ms. Rowland earned a bachelor's degree in criminal justice from Texas Christian University, graduating *magna cum laude*. During her freshman year at

TCU, she was selected as one of only 18 students to participate in the Chancellor's Leadership Program. She was also a founding member of the mock trial team, the president of the Criminal Justice Society and Alpha Phi Sigma, a director for the AddRan Ambassadors Program and the lead volunteer over the Tarrant County Teen Court program.

Ms. Rowland currently serves as a court-appointed special advocate in Oklahoma County. She served as an extern to Federal Magistrate Judge Shon T. Erwin and will join McAfee & Taft as an associate attorney after graduation.



**OU College of Law, Madison N.Y. Taylor**

Madison "Maddie" Taylor is a third-year law student at the OU College of Law. She

serves as the 2024-2025 Student Bar Association president. She is an articles editor for the *Oil and Gas, Natural Resources, and Energy Journal (ONE J)*, for which she was previously recognized as an outstanding candidate. *ONE J* recently published her student comment, "Preventing Poor Pore Policy: A Call for Interstate Cooperation," in its 10th volume. She is a teaching



assistant to Professor Erin DeWalt and a research assistant to Professor Evelyn Aswad. Additionally, she serves as a 1L mentor, is on the Board of Advocates and is a new student member of the Luther Bohanon American Inn of Court XXIII.

Ms. Taylor has earned three American Jurisprudence awards, has been on the dean's list for two semesters and is a recipient of the

Jeremy West and Cole E. Adwon scholarships. She has also participated in several traveling and intraschool competition teams and was recognized as a distinguished speaker in 1L moot court. She has interned with GableGotwals, Hall Estill and the Finney County District Attorney's Office. She also participated in the American Indian Estates Clinic with Oklahoma Indian Legal Services.

Before law school, Ms. Taylor attended Colorado State University, where she was a University Honors Scholar and earned three bachelor's degrees in economics, political science and journalism. She served as a Teach for America corps member for two years after college. Upon graduating, she will join GableGotwals in Tulsa as an associate.

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## 2025: Your Time to Get Involved!

**THERE'S NO TIME LIKE THE** present to get involved in your bar association! Make a difference by joining volunteer lawyers and serving on an OBA committee in 2025.

With more than 20 active committees, there are countless opportunities to serve and lead in your profession. This is your chance to become involved in a meaningful way and get an edge to lead and better serve your clients. In a committee, you can get involved

in your association, network with colleagues and better the association and our communities.

Committees offer the opportunity for you to work on projects that you're passionate about. Join the effort to improve access to justice for all Oklahomans, foster public understanding of the law or help your fellow lawyers who may be facing challenges with addiction or substance abuse. Plus, connect with professional colleagues and develop leadership skills at the same time.

If you're ready to make an impact, review the full list below. It won't be long before we make 2025 appointments, so choose your top three choices and fill out the online form at <https://bit.ly/3SjMzcE>.

I look forward to hearing from and working with you!

**D. Kenyon Williams Jr.**  
*President-Elect*



To sign up or for more information, visit [www.okbar.org/committees/committee-sign-up](http://www.okbar.org/committees/committee-sign-up).

### **Access to Justice**

Works to increase public access to legal resources

### **Awards**

Solicits nominations for and identifies selection of OBA Awards recipients

### **Bar Association Technology**

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

### **Bar Center Facilities**

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

### **Bench and Bar**

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

### **Cannabis Law**

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

### **Civil Procedure and Evidence Code**

Studies and makes recommendations on matters relating to civil procedure or the law of evidence

### **Disaster Response and Relief**

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

### **Diversity**

Identifies and fosters advances in diversity in the practice of law

### **Group Insurance**

Reviews group and other insurance proposals for sponsorship

### **Law Day**

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

### **Law Schools**

Acts as liaison among law schools and the Supreme Court

### **Lawyers Helping Lawyers Assistance Program**

Facilitates programs to assist lawyers in need of mental health services

### **Legal Internship**

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

### **Legislative Monitoring**

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

### **Membership Engagement**

Facilitates communication and engagement initiatives to serve bar members

### **Military Assistance**

Facilitates programs to assist service members with legal needs

### **Professionalism**

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

### **Rules of Professional Conduct**

Proposes amendments to the ORPC

### **Solo and Small Firm Conference Planning**

Plans and coordinates all aspects of the annual conference

### **Strategic Planning**

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



# ONE ASSOCIATION ★ MANY OPPORTUNITIES

## JOIN AN OBA COMMITTEE TODAY!

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

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



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# MANDATORY CONTINUING LEGAL EDUCATION CHANGES

## OK MCLE RULE 7, REGULATION 3.6

Effective **Jan. 1, 2021**, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on Legal Ethics and Professionalism, legal malpractice prevention and/or mental health and substance use disorders. For more information, visit [www.okmcle.org/mcle-rules](http://www.okmcle.org/mcle-rules).



OKLAHOMA BAR ASSOCIATION

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## ETHICS COUNSEL

### DID YOU KNOW?

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

### CONTACT

Richard Stevens, *OBA Ethics Counsel*

[www.okbar.org/ec](http://www.okbar.org/ec) | [richards@okbar.org](mailto:richards@okbar.org) | 405-416-7055

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# CourtFacts.org: Assisting the Bar in Our Public Education Mission

*By Janet Johnson*

FALL IS ALWAYS AN EXCITING time in Oklahoma. The cooling temperatures signal the change of seasons, college football, harvest festivals, the list goes on. This year, we have the additional excitement of election season. With the November presidential election at the top of many minds, our state's biennial judicial retention ballot may be somewhat overshadowed in the course of public discussion. As lawyers, though, we have a responsibility to enhance public understanding of this unique facet of Oklahoma's third branch of government.

As most Oklahoma lawyers know, voters in our state chose, in 1967, to amend the Oklahoma Constitution to establish governor-appointed judges and create the Judicial Nominating Commission (JNC). This change in the method of judicial selection came in the wake of a massive bribery scandal. Historians, such as Oklahoma lawyer Bob Burke and retired Judge Lee Card, have written very compelling books on this dark moment in our state's history.

Under this system, appellate judges are first appointed by the governor from a list of three names of qualified individuals prepared by the JNC. Appellate judges

wishing to remain in office at the end of their terms must declare their candidacy for retention. The judge's name is placed on the ballot at the next general election, and Oklahoma voters can select "yes" to vote to retain that judge or "no" to vote to not retain that judge. This system ensures the people have a voice – and further assures that those seeking redress through the courts can expect fairness and impartiality free from bias, prejudice or political influence in Oklahoma courtrooms.

Our educational training as lawyers has provided exposure to these basic concepts. It is the duty of those of us within the legal profession to share this knowledge within our own circles – our families, friends and the communities in which we live and work. To help our members fulfill that obligation, the OBA created the CourtFacts website in 2014 to provide a public education resource on this topic. For 10 years, Oklahoma voters have been invited to visit [www.courtfacts.org](http://www.courtfacts.org) to get facts about the third branch of government as well as nonpartisan information about the candidates for judicial retention in election years such as this one.

Before Oklahomans head to the polls next month, they may visit [www.courtfacts.org/retentionballot](http://www.courtfacts.org/retentionballot) to view the judges and justices they will see on the 2024 retention ballot. They will also find accurate and unbiased information about each of the 12 candidates for retention on this year's ballot. We continue to be very proud of this website and encourage all OBA members to share this voter information resource.

Looking ahead to 2025, you can also rely on CourtFacts as a resource those of us in the legal community can use to help explain the function and composition of the JNC, which consists of 15 unpaid volunteer members – six of whom are lawyers. Lawyer commissioners are elected to six-year terms by their fellow OBA members, each representing one of six congressional districts across the state (as they were composed in 1967 when the commission was established). Elections will be held next year for lawyer commissioners to represent districts 3 and 4. Visit [www.okbar.org/jnc](http://www.okbar.org/jnc) to learn more about these upcoming elections.

Advancing the administration of justice through education is a key component of the OBA's mission. A duty to serve the public



# COURTFACTS.ORG

## LEARN ABOUT YOUR COURT SYSTEM

**Get information on Oklahoma  
judicial selection, merit retention  
and judges on the retention ballot.**

with integrity and civility is one of our core values, as defined by the OBA Board of Governors during our recent strategic planning retreat. I encourage all OBA members to work closely together as lawyers to advance the rule of law and foster trust in our legal system by explaining why nonpartisan judicial selection matters and helping all Oklahomans understand why our state's method is a highly effective model. During this 2024 election cycle, I urge you to look to the CourtFacts website as a resource to help you accomplish these aims in this and every year.

I wish you health and happiness as we enjoy the autumn season!

*Janet*



To contact Executive Director Johnson, email her at [janetj@okbar.org](mailto:janetj@okbar.org).

*CourtFacts.org was created as a public service by the Oklahoma Bar Association to provide facts about the third branch of government and accurate nonpartisan information to Oklahoma voters. The OBA takes no position on voting.*

# Tips on Improving Listening Skills for Lawyers

By Jim Calloway

**L**ISTENING SKILLS ARE essential for lawyers, as they need to accurately understand their clients, colleagues, judges, jurors and opposing counsel. Outstanding listening skills can help lawyers avoid misunderstandings and build rapport with clients. However, listening skills are not innate and can be improved with practice and feedback.

## WAYS TO IMPROVE LISTENING SKILLS

- *Be prompt.* In a bygone era, lawyers' and doctors' waiting rooms were crowded, and often, a patient or client "customer" could not meet with the service provider until well after their scheduled time. Fewer people will accept that level of service today, and even if they do, it may still impair the relationship.
- *Minimize distractions.* A noisy office environment can be a distraction that makes it difficult for all parties to listen effectively. Law firm staff should be instructed not to interrupt you with calls or messages when you are with a client. If you're meeting with a prospective client, those interruptions can persuade someone that you may not be the lawyer for them.

Once, I was meeting with a lawyer, and I received a text message from a family member. I glanced at my Apple Watch and continued with our discussion. But the lawyer responded with, "I guess you are busy." I explained I was looking at a text, not the time. The lesson I learned is that many lawyers should have a clock on their desk or on the wall behind client seating so they can more discretely keep an eye on the time.

- *Be patient.* As we understand, sometimes the events that lead one to retain legal counsel can be very negative and difficult to talk about. Particularly during an initial perspective client interview, giving the individual the space to fully express their concerns and address the help they need. Sometimes there will be a brief silence.
- *Be focused.* Consider silencing your phone at the start of the interview and inviting the client to do the same.

## ACTIVE LISTENING TECHNIQUES

Active listening is a way of showing interest, attention and empathy to the speaker. Techniques include nodding, making eye contact,

responding to verbal and nonverbal cues, paraphrasing, summarizing and asking open-ended questions.

Active listening techniques can help lawyers clarify the speaker's message and build trust. For lawyers, summarizing, rephrasing and telling the client what you understood them to say can be powerful techniques that increase the likelihood of accurate communication. It is also important to make certain you understand the client's goals. Ask the client to state what they think the best outcome would be. When interviewing prospective clients or those who have never retained a lawyer before, this practice can be very beneficial.

## PAY ATTENTION TO NONVERBAL ASPECTS OF COMMUNICATION

Lawyers should not only listen to the words but also the tone, emotion and intention behind them. Listening to the underlying message can help lawyers identify the speaker's needs, goals and motivations. It can also help lawyers avoid assumptions, biases and judgments that might interfere with their listening.

## PAPER HANDOUTS? REALLY?

One of the most common barriers to effective communication is the receiver's stress, which may impair their ability to retain information. Most people come to law firms with





situations that are serious enough to generate stress. As lawyers, we want to do everything possible to make certain our new clients understand and appreciate our advice and plans to handle their matters. At the conclusion of prospective client interviews, whether you are retained or not, it is a good practice to have a handout or brochure discussing the basics of their type of matter to give them. Make certain your contact information is included on every handout. While one goal is to inform and impress potential clients so they retain you, it hurts nothing to have your words of wisdom circulating. Maybe one of their relatives hires you for a different matter after seeing your law firm's handout.

#### **SEEK FEEDBACK FOR IMPROVEMENT**

Lawyers may seek feedback on their listening skills. Surveying clients at the close of representation

about the communications they received may help lawyers enhance their listening skills. The survey responses can also reflect on their own listening habits and identify areas for improvement.

#### **CONCLUSION**

Listening skills are vital for lawyers, as poor listening habits can affect our professional performance and reputation. Lawyers can improve their listening skills by preparing before the conversation, using active listening techniques, listening for the underlying message, confirming the client's goals in their matter, giving feedback, following up and seeking feedback and improvement. By improving their listening skills, lawyers can communicate more effectively, build better relationships and achieve better results.

Let's close with one often-quoted observation on listening skills and one you may not have seen before:

"I only wish I could find an institute that teaches people how to listen. Businesspeople need to listen at least as much as they need to talk. Too many people fail to realize that real communication goes in both directions." – Lee Iacocca

"Of all the skills of leadership, listening is the most valuable – and one of the least understood. Most captains of industry listen only sometimes, and they remain ordinary leaders. But a few, the great ones, never stop listening. That's how they get word before anyone else of unseen problems and opportunities." – Peter Nulty, *Fortune* magazine

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

## Meeting Summary

*The Oklahoma Bar Association Board of Governors met Aug. 16.*

### REPORT OF THE PRESIDENT

President Pringle reported he attended the Annual Meeting, where he presided over the General Assembly and presented numerous awards. He served as a moderator during the Annual Luncheon, Delegates Breakfast and House of Delegates and attended numerous events during the meeting. He worked on fielding a candidate for the Board of Governors District 3 vacancy as well as other appointments. He consulted with Executive Director Johnson on OBA operations and upcoming meetings, prepared for the strategic planning meeting and worked with President-Elect Williams on coordinating 2025 meetings. He wrote an article for the September issue of the *Oklahoma Bar Journal*, and he reviewed and approved a request from the Bar Association of the District of Columbia to join the Southern Conference of Bar Presidents. He attended the joint reception with the Carter County Bar Association.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Williams reported he attended numerous Annual Meeting events and presided over the House of Delegates. He attended the National Conference of Bar Presidents and the Southern Conference of Bar Presidents in Chicago. He also

conferred with President Pringle regarding a candidate for the Board of Governors District 3 vacancy, worked on committee appointments and discussed planning for the 2025 Annual Meeting and 2025 Solo & Small Firm Conference with President Pringle, Executive Director Johnson and Directors Calloway and Brumit. He contacted potential donors on behalf of the Oklahoma Bar Foundation Development Committee and reviewed and approved a request from the Bar Association of the District of Columbia to join the Southern Conference of Bar Presidents. He attended a virtual meeting to review litigation involving the OBA. He reviewed the existing OBA Strategic Plan in preparation for the Board of Governors strategic planning retreat and attended the joint reception with the Carter County Bar Association.

### REPORT OF THE VICE PRESIDENT

Vice President Peckio reported she attended the OBA Annual Meeting and a series of ABA and bar leadership meetings in Chicago. She hosted the Lawyers Helping Lawyers Tulsa women's discussion group. She also attended a meeting to review litigation involving the OBA, and she attended the joint reception with the Carter County Bar Association.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the OBA Annual Meeting, the July Membership Engagement Committee meeting and the July YLD meeting, where members prepared bar exam survival kits for those taking the July exam. She participated in 2025 Solo & Small Firm Conference planning with President Pringle, President-Elect Williams and Directors Calloway and Brumit. She met with new OBA staff members, conducted OBA staff evaluations and interviewed potential janitorial services vendors for the Oklahoma Bar Center. She also met with the executive director of A Chance to Change to review the existing services contract and discuss possible changes related to the Lawyers Helping Lawyers Assistance Program. She attended meetings related to legal services for disaster survivors, the YLD Wills for Heroes clinic in Weatherford and a series of ABA and bar leadership meetings in Chicago. She met with the legal counsel for a litigation status update and conducted a meeting aimed at preparing staff for the strategic planning retreat. She also attended the joint reception with the Carter County Bar Association.

### REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hermanson reported he attended numerous events during the Annual Meeting, participated in reviewing

litigation involving the OBA and attended the joint reception with the Carter County Bar Association. He also took part in a discussion on the Bar Association of the District of Columbia becoming part of the Southern Conference of Bar Presidents and attended the joint reception with the Carter County Bar Association. Additionally, he attended the July and August District Attorneys Council board meetings, the July and August Oklahoma District Attorneys Association board meetings, the Oklahoma District Attorneys Association summer conference, the Association of Oklahoma Narcotic Enforcers conference, the District Attorneys Council conference room dedication for Suzanne McClain Atwood, the Oklahoma District Attorneys Association annual membership meeting and the Kay County Bar Association luncheon.

#### BOARD MEMBER REPORTS

**Governor Ailles Bahm** reported she attended the Annual Meeting, the Legislative Monitoring Committee Legislative Debrief and the Lawyers Helping Lawyers Assistance Program Committee meeting, and she has scheduled a meeting for that committee with Access to Justice Foundation Director Katie Dilks. She prepared for the strategic planning retreat in Ardmore, attended the joint reception with the Carter County Bar Association and has been actively engaging with the

Council on Judicial Complaints. **Governor Barbush** reported he attended numerous events during the Annual Meeting and solicited sponsor feedback. He also attended the Choctaw Nation Bar Association meeting, the Bryan County Bar Association meeting, the joint reception with the Carter County Bar Association and the Oklahoma Institute for Child Advocacy Heroes Ball. He reviewed the most recent OBA membership survey and existing OBA Strategic Plan to prepare for the strategic planning retreat, and he also spoke with Executive Director Johnson along with various judges and attorneys (including bar examiners) for thoughts and input related to strategic planning and prepared idea mapping for various issues and topics for use at the retreat. He also conferred with medical and dental professionals to inquire about what type of Lawyers Helping Lawyers Assistance Program equivalent those associations might have. **Governor Bracken** reported by email he attended numerous events held during the Annual Meeting. He also attended the OBA Military Assistance Committee meeting and the Oklahoma Bar Foundation July Board of Trustees meeting. He met with President Pringle to discuss a candidate to fill the Board of Governors District 3 vacancy and met with a special committee related to a grievance filed against an attorney. **Governor Conner** reported by email he attended

the Garfield County Bar Association meeting. **Governor Dow** reported by email she attended the Cleveland County Bar Association monthly meeting, the Oklahoma County Bar Association Family Law Section meeting and the Disaster Response and Relief Committee meeting. **Governor Hixon** reported he attended numerous events held during the Annual Meeting. He attended the Tulsa County Bar Association July Board of Directors meeting. He coordinated and approved TCBA annual awards nominations for its annual meeting, attended the combined TCBA Executive Committee meeting and graduation ceremony of its second YLD Leadership Academy and attended the Supreme Court Round-Up event of the Tulsa Lawyers Chapter of the Federalist Society. He also attended the joint reception with the Carter County Bar Association. **Governor Oldfield** reported he voted as a delegate during the Annual Meeting and attended a meeting of the Legal Internship Committee. He also attended the joint reception with the Carter County Bar Association. **Governor Rogers** reported by email he attended numerous events during the OBA Annual Meeting. He also attended a meeting of the Clients' Security Fund Committee and the ABA Fellows breakfast and meeting. **Governor Thurman** reported he attended the Annual Meeting as well as the A-ONE law enforcement conference, the Multidisciplinary Team meeting

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OBA CLE remains the top provider of CLE in Oklahoma. She reported that 85% of CLE revenue is coming through virtual programming, and therefore, the department is making a data-driven decision to focus on more virtual offerings going forward.

for District 22 and the joint reception with the Carter County Bar Association. **Governor Trevillion** reported by email he attended the Oklahoma County Bar Association Board of Directors meeting, a meeting of the OBA Credentials Committee held during the Annual Meeting and voted as a delegate during the Annual Meeting.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Talbert reported by email she attended the OBA Annual Meeting, the ABA Annual Meeting and the Uniform Law Commission Annual Meeting. She also participated in the YLD Wills for Heroes event in Weatherford.

#### 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.

#### OKLAHOMA BAR FOUNDATION BOARD OF TRUSTEES APPOINTMENT

The board approved a motion to reappoint S. Shea Bracken of Edmond

to a one-year term starting Jan. 1, 2025, and expiring Dec. 31, 2026.

#### CLE ANNUAL REPORT

Educational Programs Director McCormick provided the annual update. OBA CLE remains the top provider of CLE in Oklahoma. She reported that 85% of CLE revenue is coming through virtual programming, and therefore, the department is making a data-driven decision to focus on more virtual offerings going forward. She reported that members seem very happy with the WebCredenza learning management platform after its first full year of use. She also reported OBA CLE provided more than 12,000 credit hours of free CLE to our members, which has an average value of \$630,400. She recommends constituting a CLE Task Force to look at emerging issues.

#### PROPOSED POLICY FOR NON-OBA MEMBERS TO ATTEND CLE

The board approved a motion for a new policy that would establish specific criteria to be used to determine which non-OBA members would be permitted to

attend CLE programming on a case-by-case basis. The board also approved a motion to make the new policy effective immediately.

#### 2025 SOLO & SMALL FIRM CONFERENCE AND ANNUAL MEETING UPDATES

Executive Director Johnson provided an update on meeting planning for 2025. Current planning includes the return of the Solo & Small Firm Conference in the summer and a bar business meeting to include the election of officers in the fall.

#### OBA BOARD OF GOVERNORS DISTRICT 3 APPOINTMENT

The board approved a motion to approve the appointment of Cody Cooper, Oklahoma City, to fill the Board of Governors District 3 vacancy with a term expiring in 2027.

#### BOILING SPRINGS LEGAL INSTITUTE

Executive Director Johnson provided event information and encouraged board members to attend as invited guests.

#### D.C. BAR REQUEST TO JOIN SOUTHERN CONFERENCE OF BAR PRESIDENTS

President Pringle explained the composition of the conference, all members of which support allowing the Bar Association of the District of Columbia to join.

#### NEXT BOARD MEETING

The Board of Governors met in September, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Friday, Oct. 18, at the Public Safety Center Conference Room in El Reno.

# UPCOMING



**OBA CLE**  
Continuing Legal Education

# CLE PROGRAMS

# 2024 FALL

OCTOBER  
**29**

## CURRENT STATE OF THE LAW AND BEST PRACTICES FOR THE LEGAL PROFESSION

Featured Speaker: Herb Rubenstein, JD, MPA, PGA  
Webcast

OCTOBER  
**31**

## AVOIDING LEGAL VAMPIRES: LESSONS FROM DRACULA

Featured Speaker: Mark S. Darrah, Attorney and Author, Tulsa, OK  
Live Webcast and In-Person, Oklahoma Bar Center, OKC

NOVEMBER  
**01**

## WINNING DEPOSITIONS WITH TRIALPAD

Featured Speakers: Chad Kelliher and Jacob Rowe, Partners, Fulmer Sill  
Live Webcast and In-Person, Oklahoma Bar Center, OKC

NOVEMBER  
**05**

## GUINN VS. OKLAHOMA

Featured Speaker: TBD  
Webcast

NOVEMBER  
**08**

## INDIAN LAW SECTION

Co-Sponsored by the OBA Indian Law Section  
Live Webcast and In-Person, University of Oklahoma College of Law, Norman, OK

NOVEMBER  
**13**

## WINNING YOUR CASE WITH A BETTER MEMORY

Featured Speaker: Paul Mellor, Author  
Oklahoma Bar Center, OKC

NOVEMBER  
**19**

## BOARDS OF DIRECTORS AND PIERCING THE CORPORATE VEIL

Featured Speaker: Herb Rubenstein, JD, MPA, PGA  
Webcast

DECEMBER  
**03**

## WHAT OVERRATED ROCK BANDS TEACH ABOUT ATTORNEY ETHICS

Featured Speaker: Stuart I. Teicher, Esq., the CLE Performer  
Pre-recorded Webcast

DECEMBER  
**19-20**

## ADVANCED BANKRUPTCY

Co-Sponsored by the OBA Bankruptcy and Reorganization Section  
Live Webcast and In-Person, Oklahoma Bar Center, OKC

# Bringing Justice Home for Mothers Facing Incarceration

**F**OR NEARLY THREE DECADES, Oklahoma has led the world in female incarceration rates per capita, a distinction that carries profound implications for individuals, families and communities. The incarceration of a parent, especially a mother, often results in severe and long-lasting consequences, including the traumatic separation of children from their parents. The nonprofit ReMerge was founded in 2011 to address the root cause of this issue.

The Oklahoma Bar Foundation gives ReMerge an annual grant to support its rehabilitation and comprehensive support of high-risk and high-need mothers. Without substantial intervention, these women are unlikely to break free from the cycles of incarceration, addiction and poverty that have defined their lives. By prioritizing rehabilitation and family reunification over incarceration, ReMerge is helping to break the cycle of trauma and poverty while creating brighter futures for women and their children in Oklahoma.

## JAKERIA'S JOURNEY

Jakeria, a ReMerge client, was facing a seven-year prison sentence for drug trafficking, and her three children were placed in separate foster homes. This was a critical juncture for Jakeria and her family. The pain of being separated from her children, particularly her twins, who had never been apart, motivated her to seek help.



*Jakeria and her family*

At ReMerge, Jakeria found a supportive environment that provided the tools and resources to change her life. Through programs focused on parenting, substance abuse recovery and personal development, she was able to address the issues that led to her current situation.

In January 2024, Jakeria's hard work paid off. Her DHS case was closed, and she was reunited with her children, who are now thriving together. Her journey underscores the importance of second chances and demonstrates the impact that comprehensive support programs can have on individuals and their families.

Jakeria offers these words of encouragement for mothers facing similar struggles: "Stay strong and don't get discouraged. Fight through the negative thoughts. Without the tools and skills I learned at ReMerge, I wouldn't have my kids back. There is light at the end of the

## REMERGE PROGRAM: CATALYST COOKIES

When you buy Catalyst Cookies, you are not just getting sweet treats, you are investing directly in a ReMerge mother's job skill development, sense of purpose and future career success. Learn more and shop the cookies at [www.catalystcookies.org](http://www.catalystcookies.org).



tunnel – you may not see it but don't give up. Kids need their moms."

Jakeria's story, while unique, is representative of many parents who find themselves caught in the cycle of incarceration and family separation. By providing holistic support and a pathway to rehabilitation, programs like ReMerge offer not only hope but tangible outcomes that benefit individuals, families and communities. The success of these programs

highlights the need for continued investment in initiatives that support family reunification and rehabilitation, ensuring that more families can experience the joy of reunification and the promise of a brighter future.

You can support programs like ReMerge and bring justice home for families by giving to the OBF Community Partners Campaign. For more information, visit [www.okbarfoundation.org/donate](http://www.okbarfoundation.org/donate).

Pursuant to Article IV, Section 2 of the bylaws of the Oklahoma Bar Foundation (OBF), the following OBF members have been nominated by the 2024 Nominating Committee to serve on the OBF Board of Trustees: Chance Holland, Oklahoma City; Hannah Whitten, Oklahoma City; and Christa Rogers, Tulsa. They have been nominated for three-year terms from 2025-2027.

Any group of 25 or more Partners for Justice (formerly Fellows) may submit the name of a member of the OBF as an additional nominee by submitting a petition duly signed by said Partners and submitted to the OBF Executive Committee no later than 10 days after the nomination slate is published in the *Oklahoma Bar Journal*. Nominating petitions can be mailed to Renee DeMoss, Executive Director, Oklahoma Bar Foundation, P.O. Box 53036, Oklahoma City, OK 73152-3034, or delivered to 1901 N. Lincoln Boulevard, Oklahoma City, OK 73105-4901.

# Partners Programs

Bring Justice Home for over 66,000 Oklahoma families. Here's how:



## Partners

You can join as a Partner for Justice. Support starting at \$100/year.

## Legacy Partners

Join as a Legacy Partner by making a planned gift to the OBF.

## Community Partners

Your law firm or organization can join as a Community Partner. Support starting at \$1,000/year.

Scan to *give!*

Scan the code to give today!



Contact Candice Pace at 405-416-7081 or candicej@okbar.org for more information.

## MORE WAYS TO *support* THE OBF

### 1. CY PRES

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

### 2. MEMORIALS AND TRIBUTES

Make a gift in honor of someone. OBF will send a handwritten card to the honoree or family.

### 3. UNCLAIMED TRUST FUNDS

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

# Thank you TO OUR COMMUNITY PARTNERS

## \$5,000 DONORS

Bob G. Burke



Benjamin Russ

## \$2,500 DONORS



## \$1,000 DONORS

- Appellate Practice Law Section
- Bank of Oklahoma
- Bass Law
- Beyond Square One
- Cheek & Falcone, PLLC
- Deanna Hartley-Kelso
- Energy & Natural Resources Law
- Fellers Snider
- Financial Institutions & Commercial Law Section
- Government & Administrative Law Section
- Health Law Section
- McAfee & Taft
- Real Property Law Section
- Shiny Rachel Mathew
- Tisdal & O'Hara
- University of Oklahoma College of Law
- Whitten Burrage
- Workers' Compensation Section



Give online at *any time*  
[www.okbarfoundation.org/donate](http://www.okbarfoundation.org/donate)



**OKLAHOMA BAR FOUNDATION**  
 Law. Education. Justice.



# FROM THE PRESIDENT

(continued from page 4)


New members may have different needs than mid- or late-career attorneys. Other goals include addressing technological changes, ensuring financial stability and seeking practical solutions to the challenge of legal deserts. The strategic map that accompanies this article demonstrates the work that was accomplished during the session. When finalized, this map will guide leadership and staff in decision-making as well as prioritizing our various activities and initiatives.

The OBA's prior strategic plan was approved in 2005 and supplemented by the work of the Strategic Planning Task Force in 2010. Given the passage of time, the induction of new leaders and changes in the landscape of our profession, it was this board's belief that it was time for a refresh. While our creating purpose and principles remain the same, our practices must adjust with the times.

The new strategic plan is intended to be a living document. It should help future boards hold the organization accountable and

better pursue our goals. The OBA has a lot to do every day, but we need an overarching vision to make sure we are all pulling in the same direction.

Thank you to the Board of Governors and staff who took their valuable time to help create this document. I am excited about the future of the OBA. I hope you are too!

OKLAHOMA BAR ASSOCIATION - STRATEGIC MAP											
											
Vision											
Promoting justice.											
Mission											
To advance the administration of justice through education and regulation.											
Core Values											
Ethical representation.		Serving the public interest with integrity and civility.									
Member involvement.		Fostering participation by recognizing the different experiences and perspectives within our profession.									
Dedicated leadership.		Providing accountability and vision for the organization.									
Strategic Pillars											
The Member			The Organization				The Administration of Justice				
Invest in the professionalism, resiliency, and competency of Oklahoma attorneys.			Pursue a mindset of excellence, efficiency, and long-term sustainability. Utilize evidence-based decisions drive our future.				Advancing the rule of law and public trust in the legal system.				
Goals											
Goal 1: Strengthen and revitalize the membership community.		Goal 2: Develop a comprehensive approach to addressing the various career stages and requirements of legal professionals.		Goal 3: Create education and support on technological change impacting the legal community.		Goal 4: Maintain high-performing, engaged, and motivated staff.		Goal 5: Strengthen the systems and framework of governance.		Goal 6: Ensure financial sustainability.	
Goal 7: Foster positive relationships within all branches of government.		Goal 8: Seek practical solutions to the legal desert challenges.		Goal 9: Empower citizens to better understand their legal rights and the role of the legal profession.							
Initiatives											
Identify needs through a unified assessment and focus group series.			Partner to assess the impact of AI on the legal profession.		Create a task force to develop a competitive recruitment & retention strategy.		Assess and enhance organizational oversight and accountability structure.		Conduct a comprehensive financial analysis to identify areas for cost savings and revenue diversification.		
Demonstrate a commitment to open and transparent communication.			Identify and engage key stakeholders across the legal system.		Assess and update public focused resources and programs.						
Utilize data to develop a member engagement plan.		Create a task force to identify key projects.		Develop educational programs and resources to address needs.		Continue funding for employee technology & professional development needs.		Highlight the impact of volunteers.		Re-evaluate and align programs that are strategic and financially viable.	
Organize joint training and educational initiatives.		Conduct a comprehensive needs assessment.		Assess and develop resources to support public information.							
Launch a multi-dimensional Community Platform.		Create communication strategy for membership.		Establish governance and ethics frameworks.		Maintain a secure, quality work environment.		Create Strategic Review policy.		Remedy facility issues.	
Recognize and celebrate successful collaborative efforts.		Develop & facilitate solutions to address the root causes of the legal desert.		Address public misconceptions about the legal system.							

## Get Involved With the YLD

**THE OBA YLD CAN TAKE** the heat! Members assembled outside the Oklahoma Bar Center on Saturday, Sept. 21, for the YLD monthly board meeting. The Young Lawyers Division was organized in 1966 to provide an avenue for Oklahoma's young lawyers to work on bar-related and public service-related projects. Since that time, the YLD has taken a leadership role in all bar committees and activities.

The work of the division is carried out through the combined efforts of the officers, Board of Directors, committee chairpersons and committee members. Committees are the vehicles through which YLD implements its programs and projects and from which new ideas are developed.

Whether it be serving on the YLD Board of Directors or on one



of the various committees and projects, the division welcomes your participation. The board has monthly meetings typically held on Saturday mornings. Contact YLD Chairperson Laura Talbert at [lrtalbert@gmail.com](mailto:lrtalbert@gmail.com) to learn more.

All members of the Oklahoma Bar Association in good standing who were first admitted to the practice of law in the past 10 years are automatically YLD members.

**Celebrate**  
*With the YLD*

**The OBA YLD is celebrating our new attorneys being sworn in this month!**

**Food and fun are included for all attendees at no cost! Two events to choose from:**

<b>Oklahoma City</b> TopGolf   Chisolm Creek 13313 Pawnee Dr. 6 p.m.   Friday, Oct. 11	<b>Tulsa</b> Gridiron Sports Bar   River Spirit Casino With access to TopGolf Virtual Suites 8330 Riverside Pkwy 6 p.m.   Friday, Oct. 18
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# LOOKING FOR SOMETHING?

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## CHECK YOUR BLUE BOOK!

*It's all  
in here!*

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

# FOR YOUR INFORMATION

## IMPORTANT UPCOMING DATES

The swearing-in ceremony for new bar members is scheduled for Tuesday, Oct. 8, in the Oklahoma state Capitol House Chambers. There will be three sessions: 9 a.m. for OCU, 10 a.m. for OU and 11 a.m. for TU and out-of-state graduates.

On Tuesday, Oct. 15, join the OBA Management Assistance Program for Opening Your Law Practice. This is a no-cost, semi-annual event for new lawyers, those returning to private practice or those venturing out on their own. This day-long program will address resources for starting a new law practice, professionalism, client management and so much more. Learn more at [www.okbar.org/oyp](http://www.okbar.org/oyp).



## SHOW YOUR CREATIVE SIDE

We want to feature your work on “The Back Page” and the *Oklahoma Bar Journal* cover! Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are options too. Photographs and artwork relating to featured topics may also have the opportunity to be featured on our cover! Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen, [lorir@okbar.org](mailto:lorir@okbar.org).

## DIANA O’NEAL NAMED NEW ADMINISTRATIVE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS



Oklahoma Supreme Court Chief Justice M. John Kane IV announced that the Oklahoma Supreme Court selected Acting Director Diana O’Neal as the new administrative director of the Administrative Office of the Courts (AOC), effective Sept. 1. She will succeed Jari Askins, who retired in June.

Prior to being named acting director, Ms. O’Neal served as deputy administrative director and chief financial officer for the courts. Ms. O’Neal is a certified public accountant and a graduate of Southwestern Oklahoma State University. Her background includes executive-level positions within other state entities. Following graduation, she began her state service with the Office of the State Auditor and Inspector. Most notable in her more than 25 years in state government, she served as deputy administrator and chief financial officer for the Employees Group Insurance Division of the Office of Management and Enterprise Services.

## CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

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



## G. WILLIAM RICE MEMORIAL SCHOLARSHIP

The OBA Indian Law Section announces the opening of the G. William Rice Memorial Scholarship, aimed at law school students who intend to practice Indian law in Oklahoma.

The scholarship is open to current 2L and 3L students. The OBA Indian Law Section will award between \$2,000 and \$5,000 to seven deserving applicants to assist with the cost of the bar exam. This scholarship is granted in honor of G. William “Bill” Rice, a beloved mentor, friend and colleague to many. To apply, law students must write a cover letter describing their commitment to the practice of Indian law in Oklahoma along with a resume containing Indian law-related activities, a law school transcript and a reference letter from an academic professional to Debra Gee by email at [debra.gee@chickasaw.net](mailto:debra.gee@chickasaw.net) or by mail to P.O. Box 1548, Ada, OK 74821. Applications are due Oct. 18. The winners will be announced at the OBA Indian Law Section Annual CLE on Nov. 8.



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## LHL DISCUSSION GROUPS TO HOST NOVEMBER MEETINGS



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

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

## ON THE MOVE

**Jordan Haygood** has been promoted to regional vice president of managed care at SSM Health Illinois, Missouri and Oklahoma. He leads major payor negotiations, operations and disputes for all SSM Health hospitals and providers in each state. Four years after starting in the SSM Health Oklahoma Legal Department in 2016, he moved to managed care. Mr. Haygood received his J.D. from the OCU School of Law in 2013. He is a past OBA Young Lawyers Division chair and an *Oklahoma Journal Record* 40 Under 40 recipient.

**Judge Lory Dewey** has been sworn in as a special judge in Canadian County. She has spent her entire 22-year legal career in Oklahoma serving children and families and protecting the elderly. Judge Dewey was the lead prosecutor for the district attorney's office at the Miller Center, where she prosecuted juvenile deprived and delinquency matters. She previously served as an Oklahoma County assistant district attorney and an assistant attorney general.

**Laura R. Talbert** has been appointed interim director of the Oklahoma Office of Juvenile Affairs. She joined the office in March as chief legal officer. Ms. Talbert served as a prosecutor and in the Oklahoma Department of Corrections Office of the General Counsel. She is the current chair of the OBA Young Lawyers Division.

**Matthew C. Cecconi** has joined the Tulsa office of McAfee & Taft as an associate. He is part of the firm's Litigation Practice Group and focuses his practice on the resolution of a broad range of civil litigation matters and helping clients navigate the intricacies of federal practice and procedure. Mr. Cecconi serves on the Federal Bar Association Northern/Eastern Oklahoma Chapter Board of Governors. Previously, he served for two years as a federal law clerk to Judge P.K. Holmes III of the U.S. District Court for the Western District of Arkansas. He graduated at the top of his class at the TU College of Law in 2022.

**Jonna Vanderslice** has joined the Oklahoma City office of McAfee & Taft as an associate. She is part of the firm's Energy and Natural Resources Practice Group and focuses her practice on the representation of oil and gas exploration and production companies, oilfield service companies, midstream and transportation companies and developers of renewable and sustainable energy projects in a broad range of business and transactional matters. She graduated with honors from the OCU School of Law in 2022. Ms. Vanderslice serves on the Oklahoma Hall of Fame Second Century Board, the YMCA of Greater Oklahoma City Downtown District Advisory Council, as a member advisor for the Beta Theta Chapter of Kappa Kappa Gamma and a volunteer with Youth Leadership Oklahoma.

### HOW TO PLACE AN ANNOUNCEMENT:

The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we'd like to hear from

you. Sections, committees and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing and printed as space permits.

Submit news items to:

Hailey Boyd  
Communications Dept.  
Oklahoma Bar Association  
405-416-7018  
barbriefs@okbar.org

*Articles for the December issue must be received by Nov. 1.*

## KUDOS

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**Robert Don Gifford** has been selected to serve an eight-year term as a justice *pro tem* of the Pawnee Nation Supreme Court. He is a solo practitioner in Oklahoma City and Tulsa and the current chair of the OBA Military and Veterans Law Section, a trustee for the Oklahoma County Law Library and on the Oklahoma County Bar Association Board of Directors. Mr. Gifford also serves as a justice on the Comanche Nation Supreme Court and a trial court judge for the Kaw Nation, Iowa Tribe, Seminole Nation, Absentee-Shawnee Tribe and Miami Tribe of Oklahoma. He received his J.D. from the OU College of Law in 1996.

**Adam Scott Weintraub** has been appointed to the Oklahoma Ethics Commission by House Speaker Charles McCall until July 2029. He is a partner at the Tulsa law firm of Savage O'Donnell Affeldt & Weintraub. He also serves as an adjunct settlement judge for the Northern District of Oklahoma and an adjunct professor of law at the TU College of Law. Mr. Weintraub has over 30 years of extensive litigation experience in federal, state and tribal courts, representing local, regional, national and tribal clients. He graduated from the OU College of Law in 1989 and began his legal career as an assistant district attorney for Tulsa County.

## AT THE PODIUM

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**Marty Ludlum** presented two continuing education sessions on Federal Trade Commission regulation and employment law changes to the National Funeral Directors & Morticians Association conference in National Harbor, Maryland.

**Judge Amy J. Pierce** spoke on the panel for the topic of Indian law at the 2024 10th Circuit Bench & Bar Conference on Sept. 6 in Colorado Springs, Colorado. She is the presiding district court judge for the Choctaw Nation and the chair of the Tribal Judges Subcommittee for the Federal Bar Association.

**J**oseph T. Acquaviva Jr. of Oklahoma City died Sept. 11. He was born May 25, 1959. He graduated from Long Island University with a bachelor's degree in 1984 and received his J.D. from the OCU School of Law in 1986. Mr. Acquaviva was a partner at the law firm of Wilson, Cain & Acquaviva and was admitted to all Oklahoma district and federal courts and the 10th Circuit Court of Appeals. He was also a member of the Oklahoma County Bar Association and the National Institute for Trial Advocacy. In 2017, he was inducted into the Oklahoma section of the American Board of Trial Advocates. Memorial contributions may be made to the American Cancer Society.

**S**andra Jeane Alexander of Tulsa died July 18. She was born Dec. 5, 1950, in Tulsa. Ms. Alexander received her J.D. from the TU College of Law in 1976. Memorial contributions may be made to Planned Parenthood Great Plains in Tulsa.

**T**alor Michelle Black of Edmond died Aug. 28. She was born Sept. 5, 1989. She grew up in Edmond, graduated from Edmond Santa Fe High School and attended Southwestern Oklahoma State University. Ms. Black received her J.D. from the OCU School of Law in 2019.

**A**rthur Wayne Breeland of Dallas died Aug. 9. He was born Sept. 9, 1930. He graduated from TU and received his J.D. from the OU College of Law in 1954. Mr. Breeland practiced oil and gas law and celebrated his 70th anniversary with the OBA this

year. He served in the U.S. Army Judge Advocate General's Corps and retired as a colonel from the Army Reserve. Memorial contributions may be made to the Michael J. Fox Foundation for Parkinson's Research.

**T**homas S. Evans of Stillwater died Aug. 28. He was born May 15, 1958, in Faribault, Minnesota. Mr. Evans graduated from Bethlehem Academy High School in 1976 and studied sociology and criminal justice at the University of Minnesota. He interned with the Supreme Court of Oklahoma in 1982 and received his J.D. from the TU College of Law in 1983. The majority of his career was focused on personal injury and nursing home negligence. In 1998, he ran for the position of judge for the 8th Judicial District and enjoyed campaigning and participating in the political process. He moved his law firm, Evans Law Center, out of the Security Bank Building in Ponca City to East Grand Avenue when the opportunity to restore a dilapidated building presented itself. He was proud to be a part of the Ponca City downtown restoration project and gave back to the community in any way he could. He retired in 2023.

**G**ail Willoughby Harris of Tulsa died Aug. 8. She was born Feb. 8, 1937. Ms. Harris graduated from Ada High School and received her J.D. from the TU College of Law in 1984. She worked as an attorney before being appointed as a special judge and later as a district judge. Memorial contributions may be made to the Humane Society of Tulsa.

**J**ohn K. Lindsey of Guthrie died Aug. 18. He was born Aug. 19, 1958, in Tahlequah. He graduated from Tahlequah High School in 1976 and starred in *Where the Red Fern Grows* during his sophomore year. Mr. Lindsey studied the prerequisites for a criminal justice program at Northeastern State University while working as campus security, an officer with the Westville Police Department and, finally, the assistant chief of police at the Vian Police Department. He graduated from OU with a bachelor's degree in criminal justice in 1978. After completing the Oklahoma Highway Patrol Academy, he served as a trooper with the Motor Vehicle Courtesy Patrol Unit for four years. While in the field, he attended the OCU School of Law and received his J.D. in 1983. He then transferred to the Oklahoma Department of Public Safety Legal Division, where he worked as a deputy general counsel and general counsel before retiring with honorable recognition for his 40 years of service with the department in 2020. Memorial contributions may be made to the Oklahoma State Troopers Foundation.

**G**eorgiana T. Peterson of Oklahoma City died Aug. 28. She was born July 11, 1950, in Waurika. She graduated from OU with a bachelor's degree in nursing in 1975 and worked full time as a hospital nurse until 1983, when she graduated from the OU College of Law. She practiced in Oklahoma City, with a focus on personal injury defense.



**G**ary Lynn Porter of Oklahoma City died July 17. He was born Feb. 18, 1946, in Bartlesville. Mr. Porter completed pharmacy school at Southwestern Oklahoma State University, earned a master's degree in business administration from OCU, worked toward a Ph.D. in adult and higher education from OU and received his J.D. from the OU College of Law in 1992. He served as president of his college pharmacy fraternity, Phi Delta Chi; ambassador of the Elk City Chamber of Commerce; and president of the Rotary Club of Elk City. Mr. Porter practiced pharmacy, ran several businesses, and practiced law during his life – he and his family provided care to patients from 1979 until his retirement in 2022. He also served as president of the Nursing Home Association of Oklahoma for many years, overseeing practices to improve patient care and guiding providers in caring for vulnerable populations. As a Southwestern Oklahoma State University College of Pharmacy faculty member, he was responsible for developing a continuing education program to facilitate licensure requirements for pharmacists. He was recognized as a multiple-time Paul Harris Fellow for Rotary International and honored by the Junior Chamber of Commerce as one of three Outstanding Young Men in Oklahoma.

**R**ichard Henry Wall of Norman died July 7. He was born May 29, 1968, in Norman and was a lifelong resident. He graduated with distinction from OU with a degree in journalism in 1990, and he was a five-time recipient of the Director's Award from the H.H. Herbert School of Journalism and Mass Communication. Mr. Wall graduated from the OU College of Law in 1993, where he received the American Jurisprudence Award for Trial Techniques and Constitution Law. He practiced law from 1993 until his retirement in 2017. He focused his practice on criminal law and was committed to his role in the criminal justice system, which came from his strong belief that the system needs caring and skilled advocacy in both prosecution and defense to administer justice fairly. He was perhaps professionally most proud of helping to create the Cleveland County Drug Court, a critical program that helps people overcome addiction without incarceration. As one of two defense attorney representatives, he dedicated hundreds of hours of volunteer service to the program. Memorial contributions may be made to WildCare Oklahoma.

**T**ony L. Waller of Tulsa died July 26. He was born Sept. 23, 1935. Mr. Waller received his J.D. from the TU College of Law in 1962.

## 2024 ISSUES

### NOVEMBER

#### Probate

Editor: Evan Taylor  
tayl1256@gmail.com

### DECEMBER

#### Ethics & Professional Responsibility

Editor: Martha Rupp Carter  
mruppcarter@yahoo.com

## 2025 ISSUES

### JANUARY

#### Military & Veterans

Editor: Roy Tucker  
roy.tucker@oscn.net

### JUNE

#### Labor & Employment

Editor: Sheila Southard  
SheilaSouthard@bbsmlaw.com

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#### Law Practice Basics

Editor: Melissa DeLacerda  
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### SEPTEMBER

#### Torts

Editor: Magdalena Way  
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### MARCH

#### Cannabis Law

Editor: Martha Rupp Carter  
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### OCTOBER

#### Immigration Law

Editor: Norma Cossio  
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### APRIL

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### NOVEMBER

#### Trial by Jury

Editor: Roy Tucker  
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### MAY

#### Constitutional Law

Editor: Melanie Wilson Rughani  
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### DECEMBER

#### Ethics & Professional Responsibility

Editor: David Youngblood  
david@youngbloodatoka.com

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



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## NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office of Associate District Judge, Garfield County. This vacancy is created due to the resignation of the Honorable Brian Lovell, effective September 9, 2024.

To be appointed an Associate District Judge of Garfield County, an individual must be a registered voter of the Fourth Judicial District at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years' experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms may be obtained online at <https://okjnc.com> or by contacting Gina Antipov at (405) 556-9300. Applications must be submitted to the Chairman of the JNC no later than 5:00 p.m., Friday, October 11, 2024. Applications may be mailed, hand-delivered or delivered by a third-party commercial carrier. If mailed or delivered by a third-party commercial carrier, they must be postmarked on or before October 11, 2024, to be deemed timely. Applications should be mailed/delivered to:

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

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THE PAWNEE NATION IS NOW ACCEPTING RESUMES for a Tribal Court Public Defender. This is a three (3) year appointed position with a compensation per Court Day. For a full list of duties, responsibilities, and requirements and to submit resumes, please contact the Executive Administrative Assistant, Jamie Nelson, at [jnelson@pawneenation.org](mailto:jnelson@pawneenation.org), and/or Acting Executive Director, Brian Kirk, at [bkirk@pawneenation.org](mailto:bkirk@pawneenation.org) or call 918-762-3621. Resume submissions are accepted until the position is filled.

## POSITIONS AVAILABLE



### Senior Director of Estate and Gift Planning Oklahoma State University Foundation Stillwater, Oklahoma

Oklahoma State University (OSU) Foundation is accepting applications for a highly motivated individual who is experienced in estate and tax planning to serve as a Senior Director of Estate and Gift Planning.

#### **About the Senior Director of Estate and Gift Planning**

The Senior Director of Estate and Gift Planning works in an advisory and consulting role to aid in the solicitation and administration of significant private support for Oklahoma State University. They will work primarily with gifts made by will, trust, life insurance and life income arrangements, and through gifts of complex assets, such as real estate and mineral interests. The Senior Director will partner closely with alumni and friends of Oklahoma State University – in cooperation with their professional advisors – and with internal development staff.

Successful candidates should possess a law degree and have extensive experience with estate and tax planning. This position requires a highly motivated individual with excellent communication and interpersonal skills, the ability to maintain strict confidentiality and exceptional judgement, tact, and integrity. Regular local and regional travel is required, and a partial remote working arrangement may be accommodated.

*For more information, contact Bethany Leininger at [bleininger@osugiving.com](mailto:bleininger@osugiving.com) or visit [www.OSUgiving.com/workforus](http://www.OSUgiving.com/workforus).*

## POSITIONS AVAILABLE

DISTRICT 27 (ADAIR, CHEROKEE, SEQUOYAH AND WAGONER) has immediate opening for a full-time Assistant District Attorney, Civil Division. Salary commensurate with experience and includes full state benefit package. Please send inquiries or resume to [diana.baker@dac.state.ok.us](mailto:diana.baker@dac.state.ok.us).

### EXECUTIVE DIRECTOR OF THE TRIBAL SOVEREIGNTY INSTITUTE AND PROFESSOR OF LAW

OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW invites applications for a tenured or tenure-track 12-month position in American Indian Law. The successful applicant, in addition to being a faculty member, will also be the inaugural Executive Director of the Oklahoma City University Tribal Sovereignty Institute housed at OCU Law.

Applicants should have a lengthy history of scholarship in the area of American Indian Law and/or Tribal Law. The position will teach classes and produce scholarship. The Institute will provide support for academic research, teaching and advocacy, education, training, and cultural preservation. The Executive Director will be expected to share the Institute's scholarship, support fundraising efforts, guide the planning and implementation of the Institute, and oversee existing activities at the University related to Native and Indigenous communities, including the American Indian Wills Clinic and the Sovereignty Symposium. The salary for the position will be that of a law professor of appropriate rank, supplemented with the salary associated with the Executive Director.

Candidates should have an excellent academic background, demonstrated ability as a productive and innovative scholar, a strong commitment to the practice of inclusion, and a strong commitment to engaged classroom teaching. In addition, candidates should have administrative experience, including outreach through communications directed at both the legal community and lay people. Candidates must have either (1) a J.D. degree from an ABA-accredited law school or (2) the combination of a foreign law degree and either a U.S. LL.M. or S.J.D. degree.

Apply at: <https://careers.okcu.edu/jobs/search>.

## POSITIONS AVAILABLE

Cheek & Falcone, PLLC is a law firm in Oklahoma City in its 20th year that provides effective and efficient legal services to businesses and individuals. The Firm's primary practice areas include civil litigation, real estate, banking, construction, employment law, creditor collection work, general contract disputes, transactional work, estate planning, family law, etc., but excluding criminal law and personal injury matters. The Firm also acts as outside general counsel to various entities.

### Role Description

This is a full-time on-site role for a 6-year Associate or Of Counsel Attorney with a minimum of 4 years of litigation experience. The Attorney will be responsible for providing legal advice, conducting legal research, negotiating, drafting legal documents, and representing clients in court. The candidate will work closely with other attorneys in the firm and will have the opportunity to work on various types of cases in different practice areas. The Attorney should have prior experience with civil discovery and resolving discovery disputes.

### Qualifications

- Strong knowledge of the law and legal procedures
- 6 years of experience as an attorney, including at least 4 years of civil litigation experience
- Ability to provide sound legal advice to clients
- Excellent research and analytical skills
- Strong negotiation skills
- Ability to create and review legal documents
- Experience with representing clients in court
- Admission to the Oklahoma Bar Association or ability to become admitted promptly
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## POSITIONS AVAILABLE

Cheek & Falcone is a well-established law firm in Oklahoma City, seeking an experienced Paralegal to join our dynamic legal team. The full-time, on-site Paralegal will assist our partner and associate attorneys in civil litigation and transactional matters and will play a vital role in supporting attorneys to deliver efficient, high-quality legal services to our clients.

### Duties and Responsibilities

- Work collaboratively in a fast-paced, diverse environment, demonstrating accountability and attention to detail.
- Manage document review, assist in all phases of discovery, pleading and motion practice, trial preparation, and case management.
- Handle calendar/docket/deadline management for cases and legal processes.
- Engage directly with attorneys in document-intensive civil litigation and other legal matters.
- Support the firm's transactional practice in banking, finance, real estate, and corporate transactions.

### Required Qualifications

- 4+ years of substantive paralegal experience.
- Excellent organizational and time management skills.
- Proficient in Microsoft Word, Excel, legal research, and case management software.
- Strong proofreading, spelling, and grammar skills.
- High attention to detail in legal document preparation.
- Experience in legal research, document review, and clear communication.
- Familiarity with court rules and the ability to manage and calendar response deadlines.
- Strong work ethic with dependable attendance.

### Benefits

- Competitive compensation, based on experience
- Health, Dental, and Life Insurance
- 401(k) Plan
- FSA/Cafeteria Plan
- Bonus opportunities
- Covered parking

**Interested candidates, please send your resume to [officeadmin@cheekfalcone.com](mailto:officeadmin@cheekfalcone.com). All inquiries will be kept confidential.**

## POSITIONS AVAILABLE

BOUTIQUE TULSA BUSINESS LITIGATION/BUSINESS TRANSACTION LAW FIRM is in need of a 1-5 year associate. Salary will be commensurate with the candidate's level of experience. Application and interview process will be held in the strictest confidence. Please send correspondence and resumes to [401lmaher@gmail.com](mailto:401lmaher@gmail.com).

### General Civil Practice Attorney

The Ritchie Rock & Atwood Law Firm is seeking to fill two positions for General Civil Practice Attorneys to join the firm's team in Shawnee, Oklahoma and Pryor, Oklahoma.

### The Ideal Candidate Will Have:

- 2-5 years experience as general civil practice attorney in the practice of law
- Experience in appellate brief writing (preferred not required)
- Experience in jury trial work (preferred not required)
- A willingness to represent the firm as part of the local community
- Relocation to Shawnee/Pryor or an adjoining community
- Join the team as a team player

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To apply please submit your resume by email to [hgerhart@rrmalaw.com](mailto:hgerhart@rrmalaw.com). You may also mail a resume to Ritchie, Rock & Atwood Law Firm, P.O. Box 246, Pryor, OK 74362.

## POSITIONS AVAILABLE


JOIN OUR TEAM AT CATHCART & DOOLEY: ASSOCIATE ATTORNEY POSITION. Cathcart & Dooley, an OKC civil litigation firm with an emphasis in insurance defense and subrogation, seeks an associate attorney with 0-5 years' experience. The firm seeks a motivated individual with the ability to manage a caseload independently and who has strong legal research and writing skills. The firm offers a competitive salary, health insurance and 401K with a match, a supportive work environment, professional growth opportunities, and exposure to challenging cases. Interested candidates should submit their resume, cover letter, and a writing sample to [rcathcart@cathcartdooley.com](mailto:rcathcart@cathcartdooley.com). Please include "Associate Attorney Application – [Your Full Name]" in the subject line.

## POSITIONS AVAILABLE

AV-RATED LAW FIRM WITH TWO LOCATIONS in Stillwater and Ponca City, OK, is seeking an associate attorney. Candidates must have excellent research, analytical thinking, writing skills, and preferably courtroom experience. If hired, must live in Ponca City, Stillwater, or surrounding area. Our firm has a competitive salary range of \$60,000-\$75,000 (depending on experience), health insurance benefits, paid vacation, 401K matching program, travel allowance, paid malpractice insurance, and continued legal education. To learn more about the firm, please visit [www.holmesandyates.com](http://www.holmesandyates.com). Please submit a cover letter, resume, writing sample, references and salary requirements to [chelsea@holmesandyates.com](mailto:chelsea@holmesandyates.com).



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# Looking Back at Legal Aid: A Pioneering Program in Northeastern Oklahoma

**M**ORE THAN 57 YEARS ago, the nation's first mobile Legal Aid office and law library took to the road in Delaware County as part of the Community Action Program, established by the Economic Opportunity Act (EOA) of 1964 as part of President Lyndon B. Johnson's "War on Poverty." Journalists from across the country traveled to Jay to learn about the law office on wheels that was providing services to low-income rural Oklahomans and tribal members. The legal services program was featured in the NBC News documentary, *Justice For All?*, that aired on Oct. 27, 1967.

Laci Klinger, managing attorney for several Legal Aid offices in eastern and northeastern Oklahoma, recently discovered a treasure trove of historical documents about the mobile law office that will soon be on display, and she reflected on the historic find.

"A commitment to justice is important to Oklahomans," Ms. Klinger said. "I am reminded of that long-standing value when I look back on the legacy of our industrious forbearers as they faced overwhelming need. We are deeply rooted in the communities we serve and are honored to build on that work to improve and increase access to justice. The overwhelming need continues, but I am optimistic about the progress we will continue to make in the next 60 years."



## The Joplin Globe



**Top:** The nation's first mobile law office established under the Community Action Program gets on the road in northeastern Oklahoma.

**Inset:** Attorneys Marvin Liddell (left) and Richard Lock (center) assist a client inside the mobile office.

**Left:** Local news coverage of an NBC production team documenting the pioneering legal services program.



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**YEAR END  
REVIEW**

# 2024 YEAR END REVIEW

## DAY ONE - OKC:

TBD

*TBD, A Chance to Change, OKC*

**Bankruptcy Law Update**

*David Herber, Gable Gotwals*

**Cannabis Law Update**

*Amber Peckio Garrett, Amber Law Group, Tulsa*

*Felina Rivera, Renaissance Legal Solutions, OKC*

**Criminal Law Update**

*Barry L. Derryberry, First Asst Federal Defender, Tulsa*

**Health Law Update**

*Maggie Martin, Crowe & Dunlevy, OKC*

**Administrative Law Update**

TBD

## DAY TWO - OKC:

**Business and Corporate Law Update**

*Gary Derrick, Derrick and Briggs, LLP, OKC*

**Law Office Management and Technology Update**

*Jim Calloway, Director, Mngmt Assit Program, OBA*

*Julie Bays, Practice Management Advisor, OBA*

**Real Property Law Update**

*Kraettli Epperson, Mee Mee Hoge and Epperson, OKC*

**Estate Planning and Probate Law Update**

*Terrell Monks, Oklahoma Estate Attorneys, PLLC, OKC*

**Family Law Update**

*Stacy Acord, McDaniel Acord, PLLC, Tulsa*

**Ethics Update**

*Gina Hendryx, General Counsel, OBA*

## DAY ONE - TULSA:

**Health Law Update**

*Maggie Martin, Crowe & Dunlevy, OKC*

**Bankruptcy Law Update**

*Brandon Bickle, Gable Gotwals*

**Cannabis Law Update**

*Amber Peckio Garrett, Amber Law Group, Tulsa*

*Felina Rivera, Renaissance Legal Solutions, OKC*

**Criminal Law Update**

*Barry L. Derryberry, First Asst Federal Defender, Tulsa*

TBD

*TBD, A Chance to Change, OKC*

**Administrative Law Update**

TBD

## DAY TWO - TULSA:

**Business and Corporate Law Update**

*Gary Derrick, Derrick and Briggs, LLP, OKC*

**Law Office Management and Technology Update**

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**Family Law Update**

*Stacy Acord, McDaniel Acord, PLLC, Tulsa*

**Ethics Update**

*Gina Hendryx, General Counsel, OBA*



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