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THE OKLAHOMA BAR Journal

Volume 95 — No. 10 — December 2024



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THE OKLAHOMA BAR Journal

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The OBA's Next Chapter

By Miles Pringle

IT IS HARD TO BELIEVE THIS IS MY LAST “From the President” article. This year has gone by fast – too fast in many ways. Working with the OBA staff and Board of Governors to help lead this illustrious organization has been an honor. It has been difficult at times but always a joy. I am eternally grateful for the opportunity.

We have accomplished a lot in 2024. We adopted a new strategic plan for the first time in 20 years to set specific goals and guide the future. We secured the OBA's financial stability with the first dues raise in 20 years to start catching up with inflation. We reorganized the Bar Association Technology Committee to address OBA platforms and user interfaces. We reimagined the OBA Annual Meeting in an attempt to prioritize meaningful attorney programming. We have begun the process of updating our aging building so it can stand proud for the next generation of attorneys. We saw the Judicial Nominating Commission withstand another attack, ensuring the continuation of a competent and independent judiciary.

The work of the OBA (aiding in the administration of justice and regulating the practice of law) is a timeless endeavor. As such, 2024 is simply another chapter in the story of the OBA. I am proud of the accomplishments of this chapter, and it is now time for future leaders (and all OBA members) to improve upon the work done to date.

I am excited to see Ken Williams lead the next chapter of the OBA as the 2025 president. President-Elect Williams is dedicated to civility and professionalism. He is a good lawyer and an even better person. The OBA is in good hands with Ken.

The future of the OBA is bright. No doubt there are structural challenges, such as demography (more than 40% of OBA members are over the age of 60), but I believe the work

done in 2024 will prepare the OBA to address those challenges. There are many great leaders to pick up the torch.

Next year, I will serve as immediate past president. It will be my seventh consecutive and final year on the OBA Board of Governors. Personally, a lot has changed for me in seven years. I have had two children, changed jobs and moved houses. A lot has changed for the OBA as well, and I am proud of the work we have done while I have been on the board. Some of that work includes responding to a pandemic, hiring a fantastic new executive director and addressing challenges to the structure of the OBA. I am looking forward to seeing what we are able to achieve in 2025.

I would be remiss if I did not conclude with some acknowledgments. First, thank you to my wife, Andrea. She has been supportive of my service, from my decision to run for the board in 2018 to running for president, even though we are working parents of two young children. She is simply the best wife and mother anyone could ask for.

Thank you to the OBA staff. Anything that happens at the OBA is because staff members make it happen. Organizations are only as good as the people who work for them, and the OBA is an extraordinary organization.

Thank you to OBA Executive Director Janet Johnson. She is a phenomenal leader. I am so appreciative of the partnership we have had in my time as president. The truth is, presidents come and go, but executive directors are the constant of the OBA. We are fortunate to have such a capable and visionary leader in Janet.

Finally, thank you to my fellow members of the OBA Board of Governors. The best part of serving on the board is the relationships that are built. I have made so many friends for life in my years on the board. Thank you all for your leadership and friendship.

2024 was great. Let's make 2025 even better!



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Navigating Generative AI in Legal Practice: Harnessing Technology While Managing Risks¹

By Caroline Guerra Wolf and Lori Twomey

PPOTENTIAL COPYRIGHT VIOLATIONS, PRIVACY AND SECURITY CONCERNS, hallucinations, inaccurate or misleading information, unchecked bias and the fear that technology will replace human jobs and ingenuity – these are concerns that have been widely reported in the news about generative AI. While artificial intelligence is nothing new, the mainstream use of generative AI tools, such as the popular ChatGPT, has exploded onto the scene within the last two years. So, unless you have been living off the grid and in isolation, you’ve at least heard some of the horror stories attributed to the improper use of generative AI.

While these concerns are all valid, and the horror stories should serve as cautionary tales to us all, there are very real efficiency and productivity advantages to be gained by the proper understanding and use of generative AI tools, specifically in the legal field.

You may be curious about how generative AI could help you in your law practice, you may feel skeptical about whether this new technology truly has a place within the law, or the horror stories may have caused you to make up your mind to *never* venture into the use of generative AI. The truth is, however, as attorneys, we can’t afford to ignore generative AI, just like we can’t afford to ignore the risks and ethical pitfalls that go along with using it. Generative AI

is not just the latest technology fad, here today and gone tomorrow like the Walkman; it’s a rapidly growing and evolving tool that will eventually become as indispensable to the practice of law as online legal research is today.

To help us explore the emerging world of generative AI tools, we thought it would be fun to turn to none other than ChatGPT itself. The questions below are actual prompts provided to ChatGPT (the free version), followed by ChatGPT’s answers and our elaborations, clarifications and – at times – refutations.

Q: Can you explain, in one paragraph, how generative AI models like ChatGPT work?

ChatGPT: Generative AI models like ChatGPT operate using a type of neural network ... [followed by several sentences you need a computer science degree to decipher].

Authors: A critical thing for users to understand about generative AI is that it is like a supercharged text prediction program. These models are not actually *thinking*; instead, they produce text based on the most likely next word the model predicts will be responsive to the prompt. As such, the more specific the prompt, the better the response. And luckily for us, we don’t need to start a new conversation; instead, we can use ChatGPT’s existing response as a starting point for our next prompt. So let’s try again.

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Q: Can you explain that on an eighth-grade level?

ChatGPT: Sure! Generative AI models like ChatGPT use a special kind of computer program called a transformer. They are trained on a lot of written text, like books and articles to learn how words fit together. During training, the model gets really good at guessing what word comes next in a sentence based on the words that came before it. After training, when you give it a prompt, it uses what it learned to come up with sentences that make sense and sound like a real person talking. This way, it can answer questions and have conversations!

Authors: Importantly, not all AI is considered generative AI. For example, social media and other entertainment apps may use AI to curate suggested content based on usage patterns, and search engines may use AI to retrieve already-created content. These uses would not be considered generative AI. That said, the line is getting increasingly blurred. Take Google, for instance, which recently started including an “AI Overview” section in its search results that relies on generative AI to summarize the content of search results (with varying degrees of accuracy and helpfulness). Also, some chatbots and virtual assistants have moved beyond predefined scripts and now utilize generative AI to produce answers. In fact, Microsoft now has an AI-powered chatbot, Copilot, that can “help with creating, understanding, and editing documents” in Word and “drafting a presentation, adding or editing slides, and even summarizing decks” in PowerPoint.²

In sum, don’t be surprised when more and more of the products you use on a daily basis start integrating elements of generative AI. Ultimately, some use of generative AI may be inevitable, making it that much more important to understand how it works and what its limitations and risks are.

Q: In one paragraph, how can an attorney tell if someone (e.g., a young associate at the attorney’s firm or opposing counsel) has used generative AI to draft a document?

ChatGPT: An attorney can identify if someone has used generative AI to draft a document by looking for certain indicators, such as a lack of nuanced legal reasoning, unusual phrasing, or inconsistencies in style and tone that differ from the person’s typical writing. Additionally, the document may contain generic language, over-reliance on templates, or fail to address specific legal issues pertinent to the case. Tools that analyze text patterns or detect AI-generated content can also assist in this evaluation. Engaging in a conversation about the document’s content can further reveal whether the writer possesses the necessary depth of understanding expected from a human author.

Authors: Generative AI “detectors,” like GPTZero, have some serious drawbacks. For one, they can be wrong. On its FAQ page, GPTZero admits, “There always exist edge cases with both instances where AI is classified as human, and human is classified as AI.”³ For that reason, GPTZero discourages educators from punishing students based on its results.

Given that attorneys primarily rely on published authority to craft rules and arguments, there could be an increased risk that a generative AI detector will assign to a legal piece a higher percent probability that it was AI-generated. Therefore, if you are a judge or a supervising attorney wondering if someone used generative AI, we would caution against solely relying on AI detection tools.

Furthermore, by uploading documents or pasting text into an AI detection tool, you are sharing that data with a third-party company that may not be under a confidentiality obligation. Depending on the terms of service for the specific tool, that third-party company may even claim ownership rights over the data and use it to train future generative AI models. This could bring up some serious concerns regarding confidentiality obligations, attorney-client privilege or a potential violation of the author’s intellectual property rights.

Q: Briefly explain what it means for a generative AI model to “hallucinate.”

ChatGPT: When a generative AI model “hallucinates,” it means that the model generates information that is incorrect, made-up or nonsensical, even though it sounds plausible. This can include inventing facts, creating fake references or producing responses that are logically flawed. The AI doesn’t intentionally lie – it simply predicts text based on patterns, but without understanding the accuracy or truth of what it’s generating.

Authors: There are different ways in which generative AI can hallucinate when used for legal

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Ultimately, some use of generative AI may be inevitable, making it that much more important to understand how it works and what its limitations and risks are.

writing. The type of hallucination most readers may be familiar with is when AI tools provide citations to nonexistent cases. This occurred in the highly publicized New York case *Mata v. Avianca, Inc.*, where an attorney used ChatGPT while drafting a court filing that ended up containing citations to multiple fake cases.⁴ When ordered to produce the opinions themselves, the attorney turned again to ChatGPT, which produced fake opinions. One such fake opinion, “*Varghese v. China Southern Airlines Co., Ltd.*, 925 F.3d 1339 (11th Cir. 2019),” bore a docket number and *Federal Reporter* citation associated with completely different (real) cases, and it even listed real judges as its purported authors.⁵ This fake opinion, submitted to the court by the hapless attorney, included internal citations and quotations from yet more fake cases.⁶ Some citations in the fake opinion had correct names and citations but did “not contain the language quoted or support the propositions for which they [were] offered.”⁷

Importantly, AI tools can hallucinate in other ways besides providing completely fake citations. Authors of a forthcoming research

article identify two dimensions of legal hallucinations: correctness and groundedness.⁸ Information provided by an AI model may be factually correct and relevant to the question/prompt, but the information may be “misgrounded” – in that the cited sources are misinterpreted or inapplicable – or “ungrounded” – where no supporting citations are provided to support the response.⁹ The following is an example of a correct but “misgrounded” proposition:

The right to same-sex marriage is protected under the U.S. Constitution. *Miranda v. Arizona*, 384 U.S. 436 (1966).¹⁰

The sentence is factually correct, but the citation should be *Obergefell v. Hodges*, not *Miranda v. Arizona*.

A slightly different problem can occur when the prompt asks a legal question that has yet to be answered in the jurisdiction specified in the prompt. For example, the authors posed the following prompt to Lexis+ AI: “Does a prospective at-will employee who is terminated prior to beginning work have a claim against the employer for promissory estoppel when the prospective

employee incurred moving expenses in reliance on the offer of employment?” In a lengthy response, the generated text stated *without authority*, “A prospective at-will employee who is terminated prior to beginning work may have a claim ... for promissory estoppel.” The response then cited several estoppel cases that had nothing to do with at-will employment, prospective employees or promissory estoppel in the employment context. Most concerning, however, is that the response then cited to what it represented as a court opinion recognizing a prospective employee’s reasonable reliance; however, the citation was not to a court’s opinion but to a plaintiff’s petition that was voluntarily dismissed. So instead of responding that the prompt called for an answer that would be a matter of first impression in Oklahoma, Lexis+ AI generated an answer that was part “ungrounded,” part “misgrounded” and part legally incorrect.

As attorneys, we recognize that both correctness and groundedness are extremely important in our work. Unfortunately, when researchers from Stanford evaluated generative AI tools geared specifically toward legal research, the tools failed in one or the other dimension fairly frequently. The researchers found that Lexis+ AI provided both correct and grounded responses on only 65% of queries, and Thomson Reuters’ Ask Practical Law AI did so only 18% of the time.¹¹ In sum, if you use legal generative AI tools, it is just as imperative to look out for *fake* cases as it is to check for *irrelevant* cases – or a lack of support altogether – and you must also check the propositions themselves for accuracy.

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Q: Can an attorney’s use of generative AI violate the Rules of Professional Conduct?

ChatGPT: Yes, using generative AI can potentially violate the Rules of Professional Conduct if not done carefully. Here are some key considerations:

- 1) **Competence:** Lawyers must understand the technology they use, including its limitations. Inadequate knowledge can lead to ineffective representation.
- 2) **Confidentiality:** Attorneys must protect client information. Using generative AI could risk exposing sensitive data, especially if the AI processes it in ways that are not secure.
- 3) **Diligence:** Relying on AI without appropriate oversight could result in delays or errors, violating the duty to act diligently.
- 4) **Accuracy:** AI-generated information may not always be reliable. Lawyers must verify and ensure that the information presented is

accurate to avoid misleading clients or the court.

- 5) **Client Communication:** If AI is used in ways that affect client representation, attorneys should inform clients and, if necessary, obtain their consent.

To avoid ethical violations, attorneys should use generative AI thoughtfully, ensuring compliance with all applicable rules and standards.

Authors: According to the American Bar Association, “To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.”¹²

An additional consideration is that clients will increasingly need guidance on their own use of AI, which makes it important that

attorneys are up to speed on the advantages and risks of using this technology, as well as any new laws or regulations concerning the use of AI in different industries.

Q: What different types of legal tasks would be appropriate for the use of generative AI tools?

ChatGPT: Generative AI tools can assist with a range of legal tasks, including:

- 1) **Document Drafting:** Contracts, agreements, legal notices, and pleadings.
- 2) **Legal Research:** Summarizing case law, statutes, and generating legal opinions.
- 3) **Contract Review:** Identifying clauses, risks, and comparing contracts.
- 4) **Legal Writing:** Drafting briefs, memos, and summarizing depositions.
- 5) **Compliance & Due Diligence:** Creating regulatory documents and due diligence reports.
- 6) **Litigation Preparation:** Summarizing discovery



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documents and aiding e-discovery.

- 7) Form Generation: Customizing legal forms.
- 8) Client Communications: Drafting emails, client updates, and powering chatbots.
- 9) Data Analytics: Predicting case outcomes and analyzing document sentiment.
- 10) Translation: Translating legal documents.

AI outputs should always be reviewed by legal professionals to ensure accuracy and compliance.

Authors: While the use of generative AI tools may be appropriate for these legal tasks, it is important to keep in perspective how attorneys should effectively and efficiently use generative AI as it relates to each task. Generative AI provides an excellent “starting point” when drafting legal documents. For this type of use, generative AI tools do a competent job if given a clear and detailed prompt and if you patiently revise your “conversation” based on the outputs you receive. You can use generative AI to summarize documents and legal authority, create a checklist to use in your own drafting or explain a complicated legal topic. And, specifically with legally focused generative AI tools, you can prompt the model to provide you with a starting point for your research. In addition, once you have completed a draft of your legal document, you can upload the draft and ask the generative AI tool to evaluate the document and provide suggestions for modifications or help with targeting the tone to a specific audience. But, as advised by ChatGPT itself, “AI outputs should always be reviewed

by [you] to ensure accuracy and compliance [with the law].”

Q: Can you explain, in a poem, why attorneys should learn about generative AI?

ChatGPT:

In a world where tech evolves each day,
Attorneys must keep pace, not stay away.
Generative AI, a powerful tool,
Can help the sharp, and trip up the fool.

It drafts with speed, from contracts to briefs,
It saves time but can hide pitfalls beneath.
Errors may lurk in a polished reply,
So attorneys must learn, not just rely.

Know its strengths, and know where it's weak,
Guide its use but stay sharp and sleek.
For those who master this modern skill,
Will shape the future with sharper quill.

Authors: Not bad! And as this poem suggests, we encourage all attorneys to explore the possible advantages that generative AI tools might bring to your practice while keeping a discerning and critical eye on any generated content. Our jobs are safe, at least for now.

ABOUT THE AUTHORS



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Lori Twomey is a professor of legal writing and the director of the legal writing program at the TU College of Law. She earned her bachelor's degree from OSU and her J.D. from the University of Houston Law Center. A former litigator and appellate attorney, she also taught at the University of Houston. Ms. Twomey joined the TU College of Law in 2021, where she advises the Board of Advocates and coaches the moot court team.

ENDNOTES

1. This title was crafted by ChatGPT.
2. Microsoft 365 Copilot “Frequently Asked Questions: 05/ What kinds of things can Microsoft 365 Copilot help me with?” Microsoft, <https://bit.ly/3UQ5DD8> (last visited Oct. 16, 2024).
3. “Answers to GPTZero’s Most Common Questions,” GPTZero, <https://gptzero.me/faq> (last visited Oct. 4, 2024).
4. See *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023).
5. *Id.* at 453-54.
6. *Id.* at 454.
7. *Id.*
8. Varun Magesh, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning and Daniel E. Ho, “Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools,” *J. Empirical Legal Stud.* 7 (preprint manuscript) (forthcoming 2024), <https://stanford.io/3ZgUSN3>.
9. *Id.*
10. *Id.*
11. *Id.* at 12. Notably, this study did not evaluate Thomson Reuters’ more robust generative AI tool, CoCounsel, which would likely have a higher accuracy rate due to having access to a larger universe of documents than Ask Practical Law AI.
12. ABA Comm. On Ethics & Pro. Resp., Formal Op. 512 (2024). Readers may access the formal opinion at <https://bit.ly/3YRtuUp>.

Ineffective Assistance of Counsel With the Modern Court and Tips for Effective Trial Advocacy

By Shelley L. Levisay and David T. Mckenzie



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THE FEDERAL COURTS CHURN OUT OPINIONS on the issue of ineffective assistance of counsel on *habeus* review all the time, particularly in death penalty cases. It is the chief issue raised on post-conviction relief applications. The issue always rears its head in death penalty cases, but the rules apply in all cases. This last term, the Supreme Court, in *Thornell v. Jones*,¹ overturned a 9th Circuit opinion that inappropriately applied the standard of what the reviewing courts must examine on *habeus* review. The 9th Circuit disregarded the weight of the aggravating circumstances and gave more weight to mitigating circumstances previously presented at the trial court but in more detail.

The seminal case on ineffective assistance of counsel is *Strickland v. Washington*,² which requires the petitioner to show: 1) the attorney's performance was deficient, and 2) a reasonable probability that but for counsel's deficient performance, the outcome would have been different. To show deficient performance, the petitioner must show that "counsel's representation fell below an objective standard of reasonableness."³ Further, on the second prong, the reasonable probability means a "probability sufficient to undermine the outcome."⁴ The probability must be "substantial, not just conceivable."⁵

The courts have not defined what is required in the duty to

investigate, in part because the analysis is fact and case specific but, at a minimum, requires the attorney to consult with the defendant, file discovery motions and pretrial motions and attempt to find readily available witnesses. Not investigating further could be a reasonable decision if it is an informed decision.⁶ In Oklahoma, if raising ineffective assistance of counsel for failing to investigate, appellate counsel can seek a remand under Rule 3.11 for an evidentiary hearing with supporting affidavits.⁷ To overcome the strong presumption of trial counsel's effectiveness, the appellant's affidavits must show by clear and convincing evidence that there is

a strong possibility counsel was ineffective for failing to identify or utilize the evidence.⁸

For practitioners in Oklahoma, this standard applies not only in criminal cases, but the Supreme Court has adopted this standard for deprived or terminated parental rights cases.⁹ For all practicing trial attorneys, the rest of this article will focus on how trial attorneys can ensure they are the most effective advocates for their clients and give them the best chance the first time around.

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COMMUNICATION WITH THE CLIENT

It all begins with communication with clients. Communication is different with each client, and new practitioners may struggle with the kinds of pitfalls they may face. Some clients will tell the same story a hundred times. Others will barely talk at all. More will act as unrealized attorneys, giving you the law they found on Google or in the law library.

Rule 1.14 of the Oklahoma Rules of Professional Conduct addresses lawyers' duties when dealing with a client with diminished capacity. As much as possible, the lawyer should deal with that client as any other. If the lawyer feels that the client could be exploited because of the condition, the lawyer may take steps to protect the client, and this rule authorizes revealing otherwise protected privileged information under Rule 1.6. In a criminal case, when the client is unable to rationally assist in their defense, a lawyer may need to file an application for competency evaluation. Moreover, even if the first professional deems the client competent, a lawyer who still has concerns may request a jury trial on competence or request a second evaluation.

Client communication is one of the most difficult parts of this profession, but it is necessary. Communication and client interviews with criminal defendants may look different than in other types of cases because the goal is to defend your client, ensure that law enforcement did not violate any of the client's constitutional rights and hold the state to its burden of proof beyond a reasonable doubt. Sometimes, the job may be



explaining to the client that their story does not match the evidence or that that story does not equal a legal defense, but the lawyer must know what the story is to prepare a defense and to investigate any possible defense that may exist, which leads to tip number two.

INVESTIGATION

In light of the evolving decisions under ineffective assistance of counsel claims, trial counsel's duty to investigate has reached a higher duty of importance. At a minimum, the attorney must file any pretrial motions: a discovery motion, motions *in limine* to attempt to prohibit the state from introducing certain kinds of evidence or making certain kinds of statements, a motion to suppress, a motion for a *Jackson v. Denno* hearing if the client made any statements, and file any subpoenas for witnesses. Further, the client or an investigator should interview or attempt to interview the state's witnesses and talk to potential defense witnesses. Investigator involvement or second attorneys

are particularly important when interviewing witnesses for impeachment purposes. The investigation phase should help in developing a defense for the client.

Investigation of a potential defense or defense witnesses does not require calling the witnesses, nor does it prevent defense counsel from making strategic decisions the defendant may not like or accept.¹⁰ In *State v. Jones*,¹¹ the defendant argued on appeal that defense counsel was ineffective for not presenting conflicting alibi evidence and for not calling witnesses who were not credible. However, the court held that the trial lawyer's main duty is to make informed decisions and not to throw all arguments against the wall and hope one works.¹² Trial lawyers must investigate to make those informed choices. Clients nearly always turn against their trial lawyers after a conviction, so they should document in their trial notebooks or files what they did and why they made certain decisions in case the client raises an ineffective assistance claim or files a grievance.

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TRIAL PREPARATION

Communication with the client and investigation are part of trial preparation, but in addition, the lawyer should study the discovery material so that they know it better than opposing counsel. Another great strategy is to prepare the case – at least theoretically – from both the state and the defense perspectives to help better learn the pitfalls for each side. In preparing cross-examination topics, if an alleged victim or witness has written any reports or statements, given interviews or testified previously in a hearing, make a chart of the differences between the statements; this will also help when moving to closing arguments. If a video or audio recording exists, develop a transcript. Many artificial intelligence or AI applications can assist with this. In addition, watch or listen and note time stamps of important material so that you are armed with the impeachment material and not fumbling to find it if and when the time comes. If the litigator is adequately prepared when a witness says something new or different, they automatically know upon hearing it and will be armed with the ammunition to challenge that witness's credibility.

KNOW THE LAW AND RULES OF EVIDENCE

To be a successful trial attorney, knowing and understanding the rules of evidence is essential. Based on the review of discovery and pretrial hearings, the lawyer should have an idea of what the major legal arguments will be and the major evidence admissibility challenges. One needs to know how to admit evidence for their

side and how to prevent the other side from introducing evidence damaging to the client. It is always a good practice to have a list of common objections with the rules and, if an issue is anticipated, research the case law ahead of time to address pretrial or when the evidence is presented. Even if objected prior to trial in a motion *in limine*, the lawyer must object again at trial to preserve the error and maybe again on demurrer. Frivolous objections can irritate a jury, but the practitioner must object to anything that is essential or prejudicial to their client with a valid evidentiary basis. It is best practice to avoid speaking objections and state the objection, such as hearsay, and ask to approach if further argument is necessary.

A trial lawyer's job is to zealously defend their client within the bounds of the law. Communication, preparation, investigation and knowledge of the rules of evidence and law applicable to the case are essential to performing that function; however, no lawyer is perfect, and in every trial, practitioners should audit the trial and performance and look for ways to improve in the next case. As long as the lawyer follows these tips, they can be an effective advocate.

ABOUT THE AUTHORS



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The Dual Role of Attorney and Director: Ethical Implications for Nonprofit Board Service

By Jennie A. Hill

NONPROFIT ORGANIZATIONS FREQUENTLY SEEK THE EXPERTISE of attorneys to serve as members of their Board of Directors. The Board of Directors is legally responsible for ensuring the nonprofit organization operates according to its mission, safeguards its assets and operates in the public interest.¹ Directors serve as fiduciaries who must uphold the duties of care, loyalty and obedience throughout their board service.²

Similarly, the Oklahoma Rules of Professional Conduct prescribe duties an attorney must uphold in their service to a client.³ Attorneys serving as directors may be explicitly requested to provide legal counsel to the nonprofit organization, or a presumption may exist by other directors that opinions offered by such attorney are, in fact, legal advice. The conundrum of the dual role – attorney and director – likely triggers conflicts between these roles, especially concurrent conflicts that require thoughtful examination by an attorney.⁴ The Oklahoma Rules of Professional Conduct underscore that an attorney in this dual role must ensure the duality will not compromise the attorney’s “independence of professional judgment.”⁵ To address potential

conflicts, clarity should be sought as to the expectations of both the organization and the attorney for the attorney’s role on the Board of Directors. Attorneys should clarify whether the nonprofit organization desires their involvement as an independent director or as legal counsel for the organization. Initial clarity will aid the attorney in determining where the dual role may run afoul of the Oklahoma Rules of Professional Conduct or result in conflicts of interest that disable the attorney from serving in either capacity.

This article will highlight the concurrent conflicts that may arise in an attorney’s service as a director and will discuss ways to mitigate such conflicts. Additionally, it will underscore the ethical implications attorneys should consider

throughout their service as directors of nonprofit organizations.

DUTIES OF A NONPROFIT DIRECTOR

Nonprofit organizations generally seek directors who provide the necessary expertise and experience for effective oversight of the management and operation of the nonprofits. Directors must uphold the primary duties of loyalty, care and obedience in fulfilling their roles and obligations to the nonprofit organization.⁶ The Board of Directors bears ultimate responsibility to ensure the nonprofit organization operates in accordance with relevant law in serving its clientele, utilizing donor funds and interacting with the broader public.⁷

The duty of care requires a director to stay informed, remain

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attentive and act in a manner consistent with a reasonably prudent director under similar circumstances.⁸ The duty of obedience focuses on a director's obligation to ensure the nonprofit organization is acting within its mission and tax-exempt purpose.⁹ This duty further focuses on the director's obligation to ensure corporate assets are used in line with donative intent and restrictions.¹⁰ The duty of loyalty, however, focuses on transactions where the director has a direct or indirect conflict of interest with the nonprofit organization.¹¹ Service as both legal counsel and director may trigger a conflict of interest, breaching the attorney's duty of loyalty to the organization.

COMPETENT REPRESENTATION AND LIABILITY PROTECTIONS

Oklahoma law on nonprofit corporations provides immunity protections to directors in certain circumstances. Directors are provided immunity for vicarious liability stemming from "the negligence of corporate employees or other directors."¹² This immunity, however, is not unlimited, and directors may be personally liable for "intentional torts or grossly negligent acts or omissions personal to any director of the nonprofit corporation."¹³ A director will also be liable where they breach the duty of loyalty to the nonprofit organization or where they derive an improper personal benefit from a transaction with the

organization.¹⁴ An attorney, therefore serving both as a director and paid legal counsel, may trigger this exception where they derive an improper personal benefit from the organization's payments for their legal services.

More often, the attorney provides legal counsel at no cost to the nonprofit organization. This pro bono service, however, must be provided in line with competent representation.¹⁵ Hence, where an attorney who is unfamiliar with the requirements of a tax-exempt 501(c)(3) organization modifies the organization's bylaws to permit concurrent service of family members on the Board of Directors, this action may trigger the organization's reclassification

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Dual service as director and attorney may result in a presumption by other members of the Board of Directors that any statements made by this individual are, in fact, legal advice. An attorney should, therefore, clarify to the recipient in which capacity they are speaking – as legal counsel or as director.¹⁹

as a private foundation. This error, therefore, runs afoul of competent representation, and the organization – the client – is faced with raising a malpractice issue against its own director acting as its legal counsel. A highly precarious decision for both parties.

The Oklahoma Rules of Professional Conduct stipulate that an attorney may handle legal problems with which they are unfamiliar, but it requires necessary study of this field of law.¹⁶ An attorney unfamiliar with the Oklahoma nonprofit corporation law and Internal Revenue Code requirements for operating a nonprofit organization thus should spend considerable time studying the law and regulations prior to effectively providing legal counsel. Failure to stay abreast of the law in this area may result in malpractice issues for the attorney.

Furthermore, many nonprofit organizations have director's and officer's (D&O) liability insurance

policies to cover certain acts or omissions of a director acting in their official capacity. An attorney serving as a director, however, may not be covered by the organization's D&O policy for legal advice offered in this dual role.¹⁷ The attorney's professional liability or malpractice insurance may additionally exclude coverage where the attorney is acting in this dual capacity.¹⁸ Hence, both the nonprofit organization's liability policy and the attorney's own malpractice liability policy should be reviewed to determine if this legal service will be excluded from insurance coverage.

ROLE CONFUSION

Dual service as director and attorney may result in a presumption by other members of the Board of Directors that any statements made by this individual are, in fact, legal advice. An attorney should, therefore, clarify to the recipient in which capacity they are speaking – as legal counsel

or as director.¹⁹ This clarity should also be recorded in the board meeting minutes to reflect when an attorney is acting within their capacity as a director and not as legal counsel.²⁰ A lack of clarity may result in another director's deference that it is legal advice and unwarranted reliance on such advice. But where the attorney's statements are, in fact, legal advice, fellow directors may not treat it as advice if they are unaware of "which hat [the attorney] is wearing."²¹ To remedy role confusion, the attorney should provide sufficient information for the nonprofit organization and fellow directors to understand the risks inherent in this dual capacity and to clarify in which role they are serving at all times.²²

Service as legal counsel requires loyalty and independent judgment to the client.²³ This judgment may be materially limited where the attorney has dual responsibilities – as legal counsel and as director.²⁴ A material limitation may arise where the Board of Directors chooses a course of action contrary to the attorney's legal advice or desired course of action. In this situation, the ethical dilemma focuses on whether the attorney is materially limited by their responsibilities as a director or legal counsel to the organization and how this limitation may affect independent judgment in either role.²⁵ In essence, is the attorney capable of carrying out the desired course of action if it is, in fact, contrary to their stated legal advice or their independent judgment as a director of the organization? Thus, an attorney faced with this situation should openly communicate with the nonprofit organization – the client – about perceived conflicts

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of interest or material limitations that may result in their decision to step down as a director.²⁶

CONFIDENTIALITY AND ATTORNEY-CLIENT PRIVILEGE

Within this dual role, an attorney must maintain confidentiality and refrain from compromising the attorney-client privilege of the nonprofit organization. The Oklahoma Rules of Professional Conduct dictate that an attorney should not reveal information relating to a client's representation without their informed consent.²⁷ This duty of confidentiality is similar to a director's duty as a fiduciary to maintain confidential information of the nonprofit organization.²⁸ The challenge arises when the attorney gives legal and business advice as a director.

The American Bar Association issued an ethics opinion highlighting several cases in which attorney-client privilege was limited because a corporate director acting as legal counsel provided purely business advice.²⁹ Thus, to maintain attorney-client privilege, an attorney should clarify that a meeting is solely to provide legal advice and refrain from offering business or financial advice, except where it affects legal considerations like the application of the business judgment rule.³⁰ Additionally, an attorney may have a duty to disclose information to third parties that may limit this privilege. For instance, within the role of a director, the attorney has an obligation to disclose information to an auditor of the nonprofit organization.³¹ But within the role of legal counsel, this disclosure would be impermissible without the informed consent of the nonprofit organization.³² As underscored in *Marco v. Dulles*,

"[t]he line between [acts as a director and acts as legal counsel] is entirely too fine to permit the professional obligation as a lawyer and the fiduciary obligation as a director to be placed in convenient separate boxes."³³ Hence, knowledge obtained in this dual role may be imputed to additional members of the attorney's law firm and the attorney-client privilege limited where an attorney may ethically be required to resign as legal counsel for the organization.³⁴

CONCLUSION

Nonprofit organizations frequently solicit attorneys to serve on their Board of Directors. Within this role of director, an organization may request the attorney provide legal advice. Though not precluded by the Oklahoma Rules of Professional Conduct, an attorney should clarify the expectations for this dual capacity. In an ethics opinion by the American Bar Association, a written memorandum prepared by the attorney is recommended to outline the distinctions in the attorney's role as legal counsel and service as a director.³⁵ Expectations should also be clearly discussed initially as to the role of an attorney as a director. If a nonprofit organization stipulates that it desires the attorney to serve as its legal counsel, the attorney may determine that the dual role creates distinct conflicts of interest, and service as a purely independent director is desired.

Attorneys serving in this dual capacity should routinely state in which capacity they are speaking and make sure that is captured in corporate minutes. If the attorney is offering legal advice, inform fellow directors in advance that any scheduled meetings are only for

legal advice. Without this clarity, fellow directors may be confused as to "which hat" the attorney is wearing and misconstrue any statements as legal advice.

Additionally, prior to undertaking the dual role, an attorney should also verify any limits on D&O insurance coverage or their own malpractice insurance for board service. Both the attorney and nonprofit organization should understand where liability protections may be limited from this dual capacity.

Finally, where an attorney undertakes this dual role, any legal counsel provided should be in line with the Oklahoma Rules of Professional Conduct and competent representation. The attorney should keenly uphold their independent judgment and analyze situations where material limitations may preclude their ethical representation of the nonprofit organization. In the end, termination of either role may be necessary to avoid ongoing conflicts of interest.

ABOUT THE AUTHOR



Jennie A. Hill is a skilled attorney with Nonprofit Solutions Law PC and serves as managing attorney. She represents tax-exempt entities from formation to dissolution and advises nonprofit entities on employment, board governance, for-profit joint ventures and excess benefit issues. Ms. Hill graduated with distinction from the OU College of Law, where she served on the editorial board of the *Oklahoma Law Review* and was inducted into the National Order of Scribes. Ms. Hill is also the author of "The Cost of Benevolence: Effective Legal Counsel for Nonprofit Entities" in *Law Practice Today*.

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27. Oklahoma Rules of Professional Conduct, Rule 1.6(a).
28. ABA, Formal Op. 98-410 (Feb. 27, 1998) (discussing lawyers serving as a director of a client corporation).
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* (citing 169 F. Supp. 622, 631 (S.D.N.Y.) *app. dismissed*, 268 F.2d 192 (2d Cir. 1959)).
34. Oklahoma Rules of Professional Conduct, Rule 1.7 at Comment 35 ("The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.")
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‘During the Entire Proceedings’: The Ethics of Online Court Interpreting

By Taylor Cozzens

THROUGHOUT MUCH OF THE 20TH CENTURY, court authorities in the United States addressed language barriers by grabbing the first bilingual (or marginally bilingual) person available and asking for an interpretation of only the most salient portions of dialogue.¹ This practice denied linguistic minorities access to justice in two main ways: First, the people who acted as go-betweens – police officers, attorneys, court staff, family members – often lacked the linguistic skills or ethical acumen to do their job well; second, linguistic minorities usually received only partial or sporadic translations of court proceedings.

This latter problem became the grounds for appeal in the 1970 case of *Negrón v. State of New York*. Three years earlier, a jury had convicted Rogelio Negrón, a Puerto Rican potato packer, of murder. The problem with the trial, however, was that Mr. Negrón spoke no English, and court authorities provided an interpreter only when they needed to interrogate him. For most of the trial, Mr. Negrón did not understand what anyone was saying.

Regardless of guilt, Mr. Negrón argued that the language barrier had undermined his right to participate in his own defense. The judges who reviewed the trial agreed. For defendants with limited English, they ruled, the normal rights to consult counsel and confront witnesses implied a “derivative right” to a

qualified interpreter. As they further explained, Mr. Negrón’s right to hear and question the English-speaking witnesses against him “necessitated that he hear more than the babble of their voices.”²

In 1974, the Arizona Supreme Court reached a similar conclusion in *State v. Natividad*. In the original trial, a jury found José Natividad, a farmworker who was out of a job, guilty of transportation of marijuana and possession of the drug for sale. As in the *Negrón* case, however, the court used an interpreter mainly to question and prosecute Mr. Natividad but did not provide one to help him prepare his defense, consult attorneys or simply understand what was going on.

In his appeal, Mr. Natividad made a strong case for the right

to an interpreter throughout the entire proceedings. The justices of the Supreme Court concurred. In their words, a trial in which a defendant understood only a small fraction of the proceedings “comes close to being an invective against an insensible object, possibly infringing upon the accused’s basic ‘right to be present in the courtroom at every stage of his trial.’”³

The *Negrón* and *Natividad* cases helped establish the standard of completeness for professional courtroom interpreting. In California, one of the first states to codify this standard, rules of the court indicate that “when interpreting for a party, the interpreter must interpret everything that is said *during the entire proceedings*.”⁴ Only with such completeness can

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linguistic minorities have equal or near-equal footing with their English-speaking counterparts.

The state of Oklahoma has set the same standard. As Debora Charles, general counsel for the Administrative Office of the Courts, has explained: “The mandate for completeness means that everything should be interpreted for an LEP [limited English proficient] defendant, including arguments of counsel, testimony of witnesses and statements of the court. Even when the defendant is not actually responding to questions, meaningful language access occurs when everything that happens at the proceeding is interpreted for the LEP litigant. Interpreters should never be instructed to ‘stop interpreting’ during the proceeding if the LEP person is a party.”⁵

Professional court interpreters understand their responsibility to interpret everything. On the witness stand, they interpret responses consecutively, but for other proceedings, they use whispered simultaneous interpretation to keep linguistic minorities abreast of the dialogue. In my case,



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I cannot recall ever being asked to “stop interpreting.” However, there is one setting where the standard of completeness is sometimes forgotten: online.

Since the pandemic, more and more courts have begun conducting bond hearings, arraignments, Department of Human Services meetings and other proceedings over Zoom or similar virtual meeting platforms. Many parties, including interpreters, like this option. Yet, unfortunately, the basic Zoom meeting does not allow for simultaneous interpretation. All too often, interpreters find themselves merely looking at faces on the screen when, in a courtroom, they would be whispering alongside the linguistic minority.

In turn, linguistic minorities find themselves in a similar situation as Rogelio Negrón in the 1960s, hearing only a babble of voices. Their right to understand what is going on around them at the same level as an English speaker is effectively breached.

This challenge has two main solutions: First, we can use consecutive interpretation for all online proceedings involving linguistic minorities. Even when non-English speakers only listen in silence, as in the majority of a

bond hearing, all parties would need to pause regularly for the interpreter. Some authorities already try to do this, but the pressure of a full docket sometimes takes over. Admittedly, too, consecutive interpretation doubles the length of all proceedings. It is tedious, yet it is ethical.

A second option is a Zoom program that has two different audio channels – for example, one for English and one for Spanish. In the first channel, English-speaking parties can carry on their dialogue as normal, while in the second, the interpreter provides a simultaneous interpretation for Spanish speakers. When parties address the court in their native language, the interpreter switches to the English channel and interprets. Multi-channel platforms are common in conference interpreting jobs. They could also work for the courts.

Either method of online interpreting will help protect the rights of linguistic minorities to understand the legal proceedings that involve them. Either method will prevent courts in Oklahoma and around the nation from falling back into the old ways of sporadic interpretation that denied countless linguist minorities meaningful access to the U.S. legal system.

ABOUT THE AUTHOR



Following undergraduate studies at Brigham Young University, Taylor Cozzens earned a master's degree in Spanish translation and interpretation from the Middlebury Institute of International Studies in Monterey, California. He then moved to Norman to pursue doctoral studies at OU. For the past four years, he has worked part-time as a certified courtroom interpreter in central Oklahoma.

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**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA**

OKLAHOMA CITY AND TULSA DIVISIONS

NOTICE

Per Senate Bill No. 1456, a new Three-Judge Panel shall be appointed to serve as the Court of Existing Claims (CEC) Division of the Court of Civil Appeals. As of January 1, 2025, the Panel shall consist of:

Thomas E. Prince, Presiding Judge
Jane P. Wiseman, Judge
Robert Bell, Judge
Stacie L. Hixon, Judge (Alternate)

This Panel shall serve through December 31, 2025.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS this 19th of November, 2024.

DEBORAH B. BARNES
Chief Judge

**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA**

OKLAHOMA CITY AND TULSA DIVISIONS

NOTICE

Judge Robert Bell has been elected to serve as Chief Judge of the Court of Civil Appeals of the State of Oklahoma for the year 2025. Judge Stacie L. Hixon has been elected to serve as Vice-Chief Judge of the Court of Civil Appeals of the State of Oklahoma for the year 2025.

DATED this 19th day of November, 2024.

DEBORAH B. BARNES
Chief Judge

Advising Local Boards and Commissions

By Erica Grayson and Caroline Guerra Wolf



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ONE OF THE MANY RESPONSIBILITIES OF A MUNICIPAL ATTORNEY is advising local boards and commissions. While boards and commissions can vary widely in terms of their authority and impact, some – especially in the land-use realm – can make very consequential and highly visible decisions. It becomes very important, then, that the members of these boards and commissions understand their ethical responsibilities and that municipal attorneys are able to identify and address ethical issues as they come up.

Many public and government agencies have developed formal, structured policies with guidelines for ethical conduct for public officials and members of public bodies. For example, Oklahoma Statutes Title 74, Chapter 62, Appendix 1, Rule 4 governs conflicts of interest for state agencies in Oklahoma. The Oklahoma Ethics Commission, in turn, provides extensive guidance with its *Officers and Employees Guide*.¹ The commission reminds us, however, that these statutory ethics rules only apply to state officers and employees, and there may be differing and sometimes more restrictive requirements for local government entities.

For example, the city of Tulsa has an ethics code that sets out when a city official is prohibited from participating in a matter, outlines a process of disclosing any known conflicts of interest

and provides for oversight by an ethics advisory committee.² There are also rules applicable to specific public bodies. For example, the Tulsa Zoning Code has a specific conflict of interest provision for the Preservation Commission,³ and the Board of Adjustment’s “General Policies and Rules of Procedure” document includes a code of ethics.⁴ Ultimately, a municipal attorney or outside counsel hired to support a public body must be aware of which ethical rules apply to the particular public body they are advising.

CASE LAW

Though the exact rules in place for state agencies may differ from the rules applicable to a particular municipality or public body, there are still interesting cautionary tales stemming from agency action in Oklahoma. In *Westinghouse Electric Corp. v. Grand*

River Dam Authority, though the court found that the plaintiff’s case against the Grand River Dam Authority was technically moot, it chastised the GRDA officials for accepting extravagant vacations and gifts disguised as “advertising” and an opportunity for them to tour and assess the vendor’s facilities.⁵ Here, the court emphasized that it “protest[ed] the use of such functions to extend benefits and gratuities to state employees and their families” and gave the following admonishment:

Government agencies are uniquely endowed with the power to implement the public will, and as such, are subject to the highest levels of scrutiny by the people whom they serve. Government officials and employees must exercise great care to avoid even the appearance of impropriety in their

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duties; for they, like Caesar's wife, must be above reproach.⁶

In *Woodward v. City of Anadarko*, several council members and the mayor were subject to scrutiny for creating a public trust for electric utility service, the Anadarko Public Works Authority, and serving as trustees for the trust in addition to their roles with the city. The court found that there was no conflict because the city was a beneficiary governmental entity, and the duties involved in each role were not in conflict or for opposing interests.⁷

Cases from other jurisdictions can also provide insight on how courts might draw the line regarding potential conflicts of interest. For example, in 2015, the New Jersey Supreme Court held that when a member of a public body holds, or will soon hold, "a position of substantive leadership" in an organization, and that organization has an interest in a zoning application, then the member has a conflict of interest and should not vote on the matter.⁸ In this case, two public officials who had voted on a particular zoning application were both members of the same church. The church, in turn, was the owner of property directly adjacent to the site at the center of the zoning application. While the church itself was not the applicant – nor was it an objector – the court found that the church's status as the neighboring property owner meant that the church "clearly" had an interest in the zoning application.⁹

The question, then, was whether the church's interest in the application could be imputed to all its members, including the two public officials. The court found that a person's membership in an

organization does not necessarily mean that the person is actively involved with or aware of the organization's positions in a legal dispute.¹⁰ However, given allegations that the two public officials in this case had either recently held, or were about to hold, significant leadership positions at the church when the vote was taken, the court remanded for additional discovery to determine whether these leadership roles gave rise to a disqualifying conflict.¹¹ Notably, the court urged that its ruling "should not discourage public officials from working for religious institutions, community groups or other organizations," but instead, that recusal is a "simple solution" for the "rare circumstance in which public responsibilities and volunteer commitments conflict in a land use dispute."¹²

Another very common situation is when a member of a public body is friends with an applicant. Experts on ethics and land use suggest that while members of the public may perceive a conflict in such cases, a determination should depend on how close the relationship really is.¹³ Especially in smaller cities and towns, it might be impossible to have a quorum if merely knowing someone was enough to warrant recusal.

BEYOND CONFLICTS OF INTEREST

Beyond conflicts of interest, municipal attorneys must also be aware of attempts to circumvent the Open Meeting Act – especially in ways that members of a public body may not realize contravene the act. One such way would be for a member to meet one-on-one with other members to gain a consensus on an upcoming

agenda item prior to a meeting. A 1981 Oklahoma attorney general opinion makes clear that decision-making by public bodies in non-public meetings is "the very evil against which the Open Meeting Act is directed."¹⁴ Public bodies must make their decisions in public, and that does not occur if members have promised to vote one way or the other ahead of time based on private discussions among them – even when there is no quorum present in those private discussions.

Ex parte communication can also be a problem, especially for quasi-judicial bodies, such as boards of adjustment. The Oklahoma Supreme Court has made clear that the "constitutional guaranty of due process of law" applies to quasi-judicial proceedings and that due process requires a "full, fair and adequate" hearing.¹⁵ Accordingly, a board of adjustment must make decisions "based upon the facts presented to the board."¹⁶ For this reason, *ex parte* communications with neighbors or other interested parties outside of the hearing should be kept to a minimum; in other words, "[e]vidence needs to be gathered at the hearing, not through the *grapevine*."¹⁷

What about members who have made up their minds ahead of time but have not gone so far as to promise to vote a certain way? Case law suggests familiarity with the facts of a matter, "even to the point of having reached a tentative conclusion prior to the hearing," is not necessarily a problem.¹⁸ What is important is that the member "maintained an open mind and continued to listen to all the evidence presented before making the final decision."¹⁹

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Sometimes, a member of a public body might make statements demonstrating that they have completely prejudged an application and are no longer able to have an open mind on the issue. In that case, the member should be disqualified from participating in the decision-making process. For example, in a 1957 Rhode Island case, a neighbor told a zoning board member that he and his other neighbors planned to object to a proposed zoning ordinance change.²⁰ “What difference does it make?” replied the zoning board member, “We are going to shove it down your throats anyway.”²¹ The neighbor insisted that the zoning board member would object to it, too, if he lived in the area, and the zoning board member replied, “I don’t live there and I don’t care.”²² The court found that these statements “destroy[ed] public confidence” in the board member’s impartiality and ordered the board to rehear the application *de novo* without this member involved.²³ The court emphasized the importance that

these land-use decision-makers, holding substantial quasi-judicial power, exercise that power “with strict impartiality.”²⁴

BEST PRACTICES FOR TRAINING LIAISONS AND NEW BOARD/COMMISSION MEMBERS

Understanding potential conflicts of interest can be tricky for new board/commission members, especially when they are new to that public role, and “[e]ven people of honest character can deceive themselves about what exactly the public interest requires, especially when personal gain hangs in the balance.”²⁵

Accordingly, training for new members is imperative, as is updated training for longer-term members. In-person training has many benefits, but municipalities should also consider having written materials for members to use as a reference later. One strong example of a training handbook for board/commission members comes from the city of Raleigh, North Carolina.²⁶ This handbook discusses everything from the

purpose and composition of the various boards and commissions to the state laws regarding open meetings and public records.

Any training should provide examples of the type of conflicts likely to occur for the specific public body and what relationships potentially need to be disclosed. Detailed guidance on the municipality’s definitions of financial interest, personal interest, etc., is helpful. This guidance should clarify the duty to disclose potential conflicts and detail the procedure for such disclosure. The potential consequences for not disclosing a conflict should also be outlined in detail and emphasized.

One idea to encourage compliance with conflict of interest rules is to circulate a form ahead of each meeting where the member has to review the agenda and either check “none” or disclose the conflict of interest. Another best practice is to have a standing item at the top of each agenda, prompting the chair to inquire about conflicts of interest before discussion has started on any action items.

Transparency is often touted as a sanitizing element for government function, but that is only the first step in addressing conflicts of interest.²⁷ Once a member of a public body discloses a conflict of interest as to an agenda item, it may be wise to recommend that they physically leave the room when that item is being discussed. There can be pushback here, especially when a member is, in fact, the applicant or the applicant’s representative and would like to assist in presenting the relevant information to the public body (Always a risk when you have talented professionals on your boards and commissions!).



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However, a member’s participation in the discussion – even if they abstain from voting – may lead to undue pressure on the remaining members to vote in favor of the proposal. It is better for a recusing member to choose someone else to make the presentation. In fact, it might be worth adding language to the public body’s rules and regulations making it clear that recusing members must not only abstain from voting but must also refrain from participating in the discussion at all.

Conflicts of interest can present significant pitfalls for governmental agencies and municipal attorneys. Public officials may not assume their role within these agencies with the experience or knowledge necessary to navigate such pitfalls. However, with effective training and increased awareness of potential pitfalls, public officials can better navigate ethical quandaries – with municipal attorneys officiating from the sidelines.

CONCLUSION

A key part of a municipal attorney’s job is often to advise public boards and commissions, which, in turn, cover a wide range of subject matter. However, regardless of the topic at hand – be it a public art project or a historic preservation permit – municipal attorneys must be able to answer questions and guide these public bodies on conflicts of interest, *ex parte* communications and other ethical issues that may arise. Handling such issues wisely protects the public’s interest and bolsters the public’s confidence in their local government.

ABOUT THE AUTHORS



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ENDNOTES

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Ethical Considerations and Practical Guidance for the Storage and Transfer of Digital Client Data

By Lauren Watson

LAWYERS ARE, AMONG THEIR NUMEROUS OTHER ROLES, stewards of information who collect, process and store large amounts of confidential data on a daily basis, regardless of their area of practice. Personal injury attorneys, for example, may collect and hold a significant amount of their clients' medical information. Employment lawyers may receive information related to their clients' employees, like Social Security numbers. Given the sensitivity of this data, maintaining client confidentiality is a cornerstone of legal ethics and a fundamental duty of every attorney.

While lawyers should generally be aware of the ethical duties associated with the confidentiality of client information, those duties take on additional nuance when client data is stored, used and shared electronically. This article will serve as a refresher on the ethical duties applicable to digital client data and discuss how attorneys can meet their ethical obligations through the use of technology, the development of appropriate policies and procedures, and disaster planning.

LEGAL AND ETHICAL DATA PRIVACY OBLIGATIONS

In the United States, data privacy obligations associated with collecting personal data are governed by a combination of federal and state

law. Lawyers and law firms are generally not excepted from these laws. Depending on the amount of personal data held by the lawyer or firm, the jurisdiction of residence of their clients and, in some cases, the amount of revenue they generate annually, attorneys and firms may be required to implement a number of potentially onerous and specific technical obligations with respect to collecting, storing and using personal data. For example, if a law firm acts as a covered entity or business associate under the Health Insurance Portability and Accountability Act (HIPAA), it will be expected to adhere to the security requirements detailed in the HIPAA Security Rule to protect the confidentiality, integrity and availability

of the electronically protected health information in its possession. Law firms that are subject to state comprehensive privacy laws, such as the California Consumer Privacy Act (CCPA) and its implementing regulations, will be expected to provide for enumerated data subject rights, including the rights to access, correct and delete personal data.

In addition to these statutory and regulatory requirements, lawyers have an ethical duty to provide appropriate privacy protections for client information, stemming from the attorney ethics rules of their jurisdiction(s), like the Oklahoma Rules of Professional Conduct (ORPC). For example, compliance with Rule 1.1 of the ORPC, which requires lawyers to provide



competent representation to their clients, necessitates that lawyers develop and maintain an understanding of the benefits and risks associated with relevant technologies. Lawyers also have obligations under Rule 1.6(c) of the ORPC to protect client confidentiality by taking steps to prevent “the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Comment 16 to that rule goes further by suggesting that this obligation is not limited to merely avoiding disclosures of client information. It can also be understood to impose an affirmative obligation on lawyers to implement reasonable procedural and technological safeguards designed to prevent inadvertent or unauthorized access to or disclosure of client data. Comment 17 to Rule 1.6 of the ORPC similarly requires lawyers to take reasonable precautions to protect client information in transit. While these obligations are specific to Oklahoma, the ORPC – like the rules of professional conduct of many other U.S. jurisdictions – are based on the ABA Model Rules of Professional Conduct, and these

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obligations have been reiterated by numerous American Bar Association (ABA) ethics opinions, including Formal Opinion 477R¹ and Formal Opinion 483.²

The reasonableness of the precautions a lawyer takes will generally be determined in connection with the sensitivity of the information involved, the likelihood of the disclosure in the absence of the safeguards, the cost of the safeguards, the difficulty of their implementation and the degree to which the use of the safeguards negatively impacts the lawyer's ability to represent their clients. With respect to communications and other intentional disclosures of client data, lawyers should also consider whether the communication is subject to statutory or regulatory privacy standards or another confidentiality agreement. Although the sufficiency of a lawyer's safeguards should be assessed on a case-by-case basis, there are several broadly applicable effective approaches all lawyers can employ.

PRACTICAL CONSIDERATIONS FOR STORING AND MANAGING CLIENT DATA

Regardless of the nature of their practice, all lawyers receive confidential client data. As such, careful consideration should be given to how, where and for how long this data will be stored. In practice, this means lawyers should carefully weigh the risks and benefits of on-premises and off-premises (cloud-based) data storage. In general, storing data on premises means storing data on a server hosted within the law firm's infrastructure and controlled, administered and maintained by the firm or its IT partner. This often means storing the data onsite at the firm itself. On-premises storage can offer greater control over client data

and the infrastructure that stores it, potentially higher security for sensitive legal information and, in some circumstances, the ability to access data and operate without internet connectivity. However, on-premises storage can be pricey and requires continuous maintenance, monitoring and security management, which can be resource intensive.

For this reason, some lawyers choose to use cloud-based storage, wherein an outside service provider hosts their data. In this scenario, the cloud provider identifies, installs and maintains the infrastructure necessary to store the data, which may provide for cost savings and take some of the burden off the lawyer to monitor potential risks to the data and to identify and implement some of the updates necessary to secure the data. Nevertheless, there are numerous considerations associated with the use of third-party vendors, like cloud storage providers. Lawyers considering transitioning their data from on-premises to off-premises storage should conduct appropriate due diligence with respect to each third-party vendor under consideration. While the level of diligence required varies depending upon the sensitivity of the data being processed by these vendors, the vetting process may include requesting third-party cybersecurity and/or compliance certifications or audit reports; reviewing the vendor's policies, procedures, internal controls and training materials; and reviewing their privacy and data security history, including regulatory actions, litigation and data breaches. Ultimately, any vendor selected should have a clear technical and procedural ability to protect the data in its possession and a demonstrated history of doing so.

Once a vendor has been identified, lawyers will want to carefully review and, if necessary, incorporate risk-mitigating terms into their agreements with the vendor. This may include provisions requiring the vendor to provide annual proof of appropriate cybersecurity insurance coverage as well as terms requiring the vendor to indemnify and/or reimburse the lawyer for cybersecurity and other related violations. To the extent the lawyer is subject to one of the comprehensive state privacy laws discussed earlier, they may also wish to ensure the contract contains the requisite "processor" or "service provider" contractual restrictions on data processing and data use, as well as specific and enumerated data safeguards as may be required by applicable data privacy laws. After retaining a cloud-storage vendor, lawyers should also be careful not to become complacent and should consider performing annual reviews of their vendor's practices, such as by requesting the results of any annual third-party audits or compliance certifications obtained by the vendor.

Regardless of where the data is stored, there are additional steps all lawyers should take to protect the client data in their possession. For example, lawyers should consider restricting access to client data on the system. This entails ensuring all system users have unique accounts and are authenticated (including through the use of multi-factor authentication) before they access client information on any device or application on which it is stored. They also should conduct regular security audits and risk assessments, including penetration testing and security control audits, to identify new risks and vulnerabilities to their systems and the data stored therein.

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All subsequent findings should be promptly and completely addressed.

Additionally, lawyers should consider taking steps to ensure client data is encrypted both in transit and at rest. Back up data according to a regular schedule to ensure systems can be restored and operations resumed in the event of a data incident or other disaster. At least one frequently backed-up set of data should be stored offline, and lawyers should evaluate ways to confirm that the backed-up data can be restored. Once client data is no longer needed (such as when the retention period applicable to the client file has passed), securely and completely delete the data, including from backups.

APPROPRIATE SAFEGUARDS WHEN USING AND TRANSFERRING CLIENT DATA

When it comes to transferring client data, lawyers must balance the convenience and efficiency of electronic communication and data transfer methods with their paramount duty to protect client confidentiality. Lawyers should carefully assess the sensitivity of client data transferred and always err on the side of caution. Where the data being transferred by a lawyer is sensitive, they should even more carefully evaluate the security of the communication channels they intend to use to ensure any data transferred is sufficiently protected. To protect client data and minimize the risk of interception or inadvertent disclosure, lawyers can do things like use encrypted emails and secure file transfer protocols and virtual private networks (VPNs) as appropriate. Public Wi-Fi networks and other unsecured communication channels should be avoided, and clients should be appropriately advised

of the transfer methods the attorney will employ to share their personal data in all instances.

In addition to more traditional methods of transferring and sharing client data, lawyers should also exercise caution when using artificial intelligence tools. In particular, there are a number of ethical pitfalls associated with the use of generative artificial intelligence – a subset of artificial intelligence focused on creating new, original content or data using advanced algorithms and learning techniques. Commonly used forms of generative artificial intelligence include ChatGPT and DALL-E2. Artificial intelligence tools specific to the practice of law are, likewise, coming into broader use. Because these tools use large data sets (including, in some instances, data inputted by users) to train and develop their models, lawyers must understand that any information they submit to artificial intelligence tools is likely not private or confidential and may be visible to others, incorporated into responses that are generated for others or even used to train the model itself. Moreover, they should assume that any data, regardless of its nature, that is inputted into an artificial intelligence tool cannot be deleted or otherwise removed from the tool. As such, lawyers should decline to input confidential or proprietary data, including client data, into outside artificial intelligence tools that have not been thoroughly vetted to ensure they meet legal and ethical privacy and confidentiality standards.

CONCLUSION

The rapid evolution of technologies available to aid lawyers in their practices is a boon to both individual lawyers and the legal field as a whole. Nevertheless, capability

comes with duty, and as the tools available to lawyers increase, so too do lawyers' obligations to protect the confidentiality and security of their clients' confidential data. Lawyers who: 1) develop and implement comprehensive data protection policies – including privacy policies, information security policies and incident response plans – to codify appropriate data security and confidentiality practices as discussed herein; 2) clearly communicate their data protection policies and practices to employees and train them on the same; and 3) stay current with technological advancements and legal requirements, then evaluate and revise their data protection policies and practices accordingly, will be well positioned to meet their legal and ethical obligations to their clients.

ABOUT THE AUTHOR



Lauren Watson is a cybersecurity and privacy attorney at Ogletree Deakins. She dedicates her practice to assisting clients with matters including data security incident and data breach response, preparation of privacy policies and notices, negotiation of data protection agreements and other aspects of compliance with privacy and cybersecurity laws and regulations, such as comprehensive state privacy laws, sectoral privacy laws and laws regulating biometric data and employee monitoring activities across the country.

ENDNOTES

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‘Whatcha Gonna Do?’

A Primer on Oklahoma’s Attorney Discipline Process

By Martha Rupp Carter

“Bad boys, bad boys,
Whatcha gonna do?
Whatcha gonna do when they come for you?”¹

The scales of justice and the Oklahoma Bar Association’s return address adorn the envelope in the office mail stack. Seeing this envelope may cause internal alarm bells to ring for some. Maybe this communication was not expected. Maybe it was anticipated with dread. And maybe neither alarm nor dread is warranted. Opportunities may open for help and improvement, or the attorney could be vindicated from an ill-founded complaint. Although it may not feel so, the purpose of Oklahoma’s attorney discipline process is not to punish lawyers. Its primary purpose is to protect the public.

This purpose is evident from the OBA website. Information on how to file a grievance against an attorney, a grievance form and general information about the grievance process are readily accessible. Reviewing this information is helpful to all attorneys, whether or not they are directly involved in a disciplinary

proceeding. Neglect is the number one reason for grievances. This knowledge could alert attorneys to avoid neglect of client matters. Only a very small percentage of attorneys who undergo discipline are suspended or disbarred.

This article will provide an overview of the disciplinary authority and powers of the OBA over its attorneys, the grievance process related to allegations of attorney misconduct, the requirements to respond to a grievance as well as the range of discipline that can be imposed and services that can be offered to attorneys.

PROTECTION OF THE PUBLIC

Protecting the public is paramount, as indicated by continuation of a disciplinary process, even in cases where the person filing the grievance neglects to sign the grievance form or is unwilling to prosecute the charge.² Abatement of the disciplinary process is at the sole discretion of the OBA Professional Responsibility Commission

(commission).³ The process is not concluded by settlement or compromise of the dispute between the grievant and the lawyer or by a lawyer’s restitution to a client. Pending criminal or civil litigation or administrative proceedings will not defer or abate grievance handling because allegations are substantially similar, absent a good-cause determination.⁴

PRIVILEGED AND CONFIDENTIAL, TO AN EXTENT

The privacy of attorneys involved in the disciplinary process is protected through certain phases of the process. Matters and the oral and written statements about those matters contained in grievances are privileged. Investigations conducted in the disciplinary process are confidential, with the results of investigations not to be made public unless authorized by the Oklahoma Supreme Court.⁵

The files and records in disciplinary investigations are kept private and confidential with enumerated exceptions. Exceptions

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include other bar associations' exercise of disciplinary authority over attorneys, the OBA Clients' Security Fund Committee and law enforcement agencies making a proper showing.⁶

The final disposition of a grievance, in which no formal complaint is filed with the Oklahoma Supreme Court, may be made public at the option of the attorney. Information regarding final dispositions of grievances is provided to persons filing grievances as well as respondents.⁷ Formal complaint, an answer (if any), and other filings and proceedings filed with the clerk of the Oklahoma Supreme Court become a matter of public record if the process reaches the stage of formal proceedings and is in accordance with applicable rule.⁸

The proceedings brought under Rule 6 (Formal Proceedings Before Supreme Court and Professional Responsibility Tribunal), Rule 7 (Summary Disciplinary Proceedings Before Supreme Court), Rule 8 and Rule 11 of the Rules Governing Disciplinary Proceedings (RGDP) are filed with the clerk of the Oklahoma Supreme Court and are matters of public record.⁹ Rules 8 and 11 deal with resignation and reinstatement, respectively, and those proceedings are not discussed in the article.

STRUCTURE OF DISCIPLINARY PROCESS

The RGDP¹⁰ set forth the discipline process and requirements. The Oklahoma Supreme Court declares its "original and exclusive

jurisdiction" and its "inherent power" in all matters involving admission to practice law in Oklahoma and "to discipline for cause any and all persons licensed to practice law in Oklahoma."¹¹

Discipline can be imposed for acts contrary to prescribed standards of conduct performed in an attorney's professional capacity or otherwise.¹² Acts that would "reasonably be found to bring discredit upon the legal profession," whether they be felonies, misdemeanors or a crime at all are grounds for discipline. The RGDP specifically provides that conviction in a criminal proceeding is not required to impose discipline. The Oklahoma Rules of Professional Conduct (ORPC) is the standard of conduct for all lawyers in Oklahoma.¹³

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To summarize, the GC investigates all matters involving alleged misconduct or incapacity and reports the results of investigations to the commission.

The tripartite system of attorney discipline is comprised of the OBA general counsel (GC), the commission and the Professional Responsibility Tribunal (the tribunal).¹⁴ The Oklahoma Supreme Court retains ultimate authority over formal proceedings.

The GC is selected by the OBA Board of Governors with the concurrence of the commission.¹⁵ For purposes of this article, the GC's duties and powers include: investigating "all matters involving possible misconduct" called to the GC's attention by complaint or otherwise; reporting the results of the investigations undertaken by, or under the direction of, the GC to the commission; making recommendations to the commission regarding formal complaints of alleged misconduct; and prosecuting all proceedings under the rules.¹⁶ The GC has the power, with the commission's approval, to employ and supervise staff needed to perform the GC's duties.¹⁷ As of this writing, the Office of the General Counsel employs six attorneys, five investigators and four support staff.

The commission has seven members, five of whom are active

OBA members and lawyers in good standing appointed by the OBA president, subject to approval by the OBA Board of Governors. The other two are nonlawyers who reside in different congressional districts; one is appointed by the speaker of the Oklahoma House of Representatives and the other by the president *pro tempore* of the Oklahoma Senate.¹⁸ All commission members serve three-year terms and may not serve for more than two terms.¹⁹ Four commissioners constitute a quorum; so long as a quorum is present, the affirmative vote of a majority of those present suffices for commission action.²⁰ Annually, the commission elects a chairman and a vice chairman to serve one-year terms.²¹

The powers and duties of the commission include:

- 1) considering and investigating any alleged ground for discipline of any lawyer called to its attention or upon its own motion and taking such action appropriate to effectuate purposes of the RGDP;
- 2) holding hearings, administering oaths or affirmations,

- receiving testimony and other evidence and issuing and serving or causing to be served subpoenas requiring testimony or production of books, records, papers, documents or other tangible evidence in the course of its investigations;
- 3) enforcing compliance with its directions or orders, maintaining order in its sessions and, in the event of contemptuous refusal to obey its orders, certifying such matters to the chief justice of the Oklahoma Supreme Court; and
- 4) requiring lawyers and other persons to respond or give testimony in connection with commission investigations.²²

The third head of the disciplinary tripartite is the tribunal, a panel of masters comprised of 21 members – 14 of whom are active OBA members and lawyers in good standing and seven of whom are nonlawyers. The lawyer members are appointed by the OBA president, subject to approval of the OBA Board of Governors. The nonlawyer members are appointed by Oklahoma's governor. Tribunal members serve three-year terms and may serve no more than two full terms.²³ The function of the tribunal is to conduct hearings on formal complaints filed against lawyers and on applications for reinstatement to the practice of law.²⁴ Annually, the tribunal elects a chief master and a vice chief master.²⁵

To summarize, the GC investigates all matters involving alleged misconduct or incapacity and reports the results of investigations

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to the commission. The commission functions as a grand jury with oversight and direction of the GC, considers and investigates alleged grounds for discipline of lawyers and takes such action as it deems appropriate to effectuate the RGDP. The commission determines the disposition of grievances and may direct the filing of a formal complaint for alleged misconduct or personal incapacity of a lawyer. The tribunal conducts hearings on formal complaints determined by the commission or as directed by the Oklahoma Supreme Court.

ACTIVATION OF DISCIPLINARY PROCESS

The RGDP can be activated by a grievance or request as well as an awareness of the GC or the commission “brought to their attention by any means whatsoever” of the need for investigation. If the process is activated by grievance or request for an investigation, the same is required to be in writing and signed by the person who files the same.²⁶ The lawyer is required to be immediately notified of the receipt of a grievance and furnished a copy. Anonymous grievances do not suffice, as the identity of the complaining party is a relevant fact.²⁷ In matters without signed grievances, the GC must provide a recital of the relevant facts or allegations to the lawyer.²⁸

DISCIPLINARY PROCEEDINGS

Following the preliminary investigation, the GC will do one of two things: 1) The GC will notify the grievant and the lawyer that the allegations are inadequate, incomplete or insufficient to warrant the commission’s further action; or 2) the GC will file and serve a copy of the grievance (or, in the absence

of a grievance, a recital of the relevant facts or allegations) upon the lawyer.²⁹ The GC will make a report and recommendation on each grievance to the commission following the completion of the GC’s investigation or follow-up investigation requested by the commission.³⁰

The commission, upon consideration of the GC’s report and recommendation and any further investigation deemed advisable, shall either:

- 1) direct that no formal disciplinary proceedings be commenced (the GC shall then notify the person filing the grievance that factual circumstances do not warrant further investigation or disciplinary action);
- 2) direct the immediate expungement of a grievance the commission finds to be wholly frivolous or without merit (upon such expungement, not to occur until 60 days’ notification to the grievant, the respondent attorney may treat the grievance as if it was never asserted);
- 3) direct that a letter of admonishment be written to the respondent attorney by the GC;
- 4) direct that no formal proceedings be instituted against the attorney conditioned upon the attorney’s acceptance of a private reprimand before the commission (a notice of time and place would inform the attorney to appear before the commission to receive the private reprimand – if the attorney fails to appear, the commission might

- consider the advisability of filing a formal complaint); or
- 5) direct the GC to file a formal written complaint with the Oklahoma Supreme Court within 30 days of the commission’s vote.

In addition to, or in lieu of, any of the above actions, the commission may direct the GC to refer the attorney’s name to the OBA Lawyers Helping Lawyers Assistance Program Committee. This referral would be made without reference to the source or subject matter of the complaint.³¹ Such a referral would not delay disposition of the complaint absent good cause.

RESPONDENT ATTORNEY OBLIGATIONS

Attorneys cannot bring litigation or threaten to do so against a person who files a grievance by reason of the filing. Doing so is grounds in itself for discipline.³²

The lawyer is required to make a written response to the grievance or the GC’s recital of relevant facts and allegations. The response is to contain a “full and fair disclosure” of all facts and circumstances that pertain to the alleged misconduct unless the lawyer indicates the refusal is predicated upon expressed constitutional grounds.³³ The lawyer is required to make specific and complete disclosure as to all material matters when called upon to answer or give testimony. The exception is if the lawyer personally states that a refusal to answer is on the grounds that the answer might disclose matters that are privileged or would tend to incriminate or show the lawyer guilty of an act or offense that would be grounds for discipline.³⁴

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Deliberate misrepresentation in the response to a grievance is grounds for discipline. The failure to respond within 20 days after service of the grievance or recital is grounds for discipline.³⁵

OBA members are required to provide a current address to the association and inform the association of any changes in address in accordance with the requirements of the Rules Creating and Controlling the Oklahoma Bar Association.³⁶ Compliance with this requirement by OBA members is critical. Proof of mailing to an attorney at that address is sufficient to prove service in the disciplinary process. Service of any and all correspondence, notice and any formal complaint may be made on a respondent lawyer, in person or by mail, directed to the attorney at the last address shown on the official roster of the OBA.³⁷

In connection with a disciplinary matter, an attorney is forbidden from knowingly making a false statement of a material fact, failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly failing to respond to a lawful demand for information from a disciplinary matter; this rule does not require disclosure of information otherwise protected.³⁸

A lawyer who knows that another lawyer has committed a violation of the ORPC that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects is required to inform the appropriate professional authority.³⁹

Oklahoma lawyers are required to notify the GC whenever discipline for lawyer misconduct has been imposed in another

jurisdiction within 20 days of the final order of discipline. Failure to do so is grounds for discipline.⁴⁰

Although not presently required by the RGDP, an attorney may have an implicit duty to self-report a criminal conviction, at least to the extent that the conviction has been previously determined to demonstrate an unfitness to practice law.⁴¹

DISCIPLINE DIVERSION PROGRAM

If "lesser misconduct" is at issue, the GC can refer an attorney to the OBA's Discipline Diversion Program. The GC must consider the following criteria before such a referral:

- 1) the nature of the misconduct alleged,
- 2) whether the alleged misconduct appears to be an isolated event,
- 3) whether participation in the diversionary program could benefit the respondent and
- 4) whether participation in the diversionary program might jeopardize protection of the public.

"Lesser misconduct" is misconduct that does not warrant a sanction restricting an attorney's license to practice law. The RGDP does not define "lesser misconduct" as to what it is but rather to what it is not. Misconduct cannot be lesser misconduct if it involves the misappropriation of funds; if it resulted or is likely to result in substantial prejudice to a client or another person; if the respondent attorney has been publicly disciplined in the last three years; if it is of the same nature as misconduct for which the attorney has

been disciplined in the last five years; if it involves dishonesty, deceit, fraud or misrepresentation by the attorney or if the misconduct constitutes a "serious crime," which is described as any felony or lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.⁴²

According to the ORPC, professional misconduct is committed in specified ways. These include: 1) violating the ORPC or knowingly assisting or inducing another to do so or doing so through the acts of another; 2) committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer in other respects; 3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and 4) engaging in conduct that is prejudicial to the administration of justice.⁴³ Comment [2] to Rule 8.4 of the ORPC is informative and provides:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of

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those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

If lesser misconduct can be established, allowing the GC to refer an attorney to the diversionary program, opportunities include law office management assistance, Lawyers Helping Lawyers, psychological counseling, continuing legal education programs and professional responsibility classes.⁴⁴ Prevention is the primary consideration of the OBA Discipline Diversion Program. It is designed to address complaints related to issues like disorganization, procrastination, poor office management or other personal challenges. The history,

purposes, goals and offerings of the Discipline Diversion Program are the topic of an article that is accompanied by an anonymous personal account of an attorney who was referred to the program.⁴⁵

Participation in the program is confidential, although the complaining party will be advised that the attorney has been referred to the diversionary program.⁴⁶ Attorneys have the right to not participate in the Discipline Diversion Program; the matter then proceeds as if no offer of referral was extended.⁴⁷ If the GC extends an offer of referral, the GC and the attorney negotiate a contract tailored to the attorney's individual circumstances and the alleged misconduct. This contract will provide for oversight of all the conditions imposed on the diverted attorney. The attorney will bear the costs incurred by the diversion.⁴⁸ The diversion contract will acknowledge that a material violation of a term of the contract

renders voidable the respondent attorney's participation in the program and that an investigation of the alleged misconduct may proceed or that the matter may be forwarded to the commission for its consideration. A material violation is admissible as evidence in a subsequent disciplinary proceeding.⁴⁹

After the parties enter into the contract, the disciplinary matter is held in abeyance. Upon successful completion of the contract, the disposition negotiated in the contract results.⁵⁰ This could be a dismissal, a letter of admonition or a private reprimand from the commission. The Discipline Diversion Program is designed to give attorneys an opportunity for rehabilitation instead of public retribution for transgressions. Participation in the program can be considered by the commission in future allegations of misconduct.

If lesser misconduct can be established, allowing the GC to refer an attorney to the diversionary program, opportunities include law office management assistance, Lawyers Helping Lawyers, psychological counseling, continuing legal education programs and professional responsibility classes.⁴⁴

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RULE 6: FORMAL PROCEEDINGS OF MISCONDUCT BEFORE THE SUPREME COURT AND TRIBUNAL

At the direction of the commission, formal proceedings involving misconduct are initiated by a formal complaint in a Rule 6 proceeding. The complaint is prepared by the GC, approved by the commission, signed by the commission's chairman and filed with the chief justice of the Oklahoma Supreme Court. The complaint sets forth the specific facts of the alleged misconduct. If prior conduct that resulted in discipline or evidence from prior investigations is relied upon to enhance discipline, such prior acts or misconduct must be stated in the complaint.⁵¹

At the chief justice's direction, the clerk shall notify the tribunal's chief master and the OBA president of the complaint.⁵² The respondent has 20 days after the complaint is mailed to file an answer with the chief justice. The respondent cannot challenge the complaint with a demurrer or motion.⁵³ The attorney may include in the answer a request for accelerated disposition; thereafter, the entire proceedings shall be concluded by the tribunal and the court without appreciable delay. If the attorney fails to answer, the charges shall be deemed admitted. Evidence is required to be submitted to determine the discipline to be imposed.⁵⁴

The formal complaint and any answer submitted by the attorney are lodged with the clerk of the Supreme Court after the time to answer has expired.⁵⁵ The matter now becomes public record. Further filings in the matter are lodged with the clerk.

The GC may amend the complaint to add or delete allegations as permitted under the general rules of civil procedure. The respondent has the right to file an answer within 20 days of the amendment.⁵⁶

If there is sufficient evidence of misconduct to show the attorney violated the ORPC and that

the conduct "poses an immediate threat of substantial and irreparable public harm," the GC, with concurrence of the commission chairperson, may file a verified complaint requesting interim suspension and other appropriate relief. This complaint is served personally or by certified mail



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with return receipt requested to the attorney.⁵⁷ If the attorney refuses to sign for or does not claim the certified mail, service may be effected by regular mail.⁵⁸

After the verified complaint is filed, the Supreme Court may issue an order directing the respondent to object and show cause within 10 days why an order of interim suspension should not be entered. If the respondent timely objects, a hearing will be set at the earliest possible time either before the court or any justice who may rule on the matter, or the court may refer the matter to the tribunal for hearing and recommendations.⁵⁹

The court's order of interim suspension may include other orders to the respondent needed to preserve and recover client funds or property or that of others.⁶⁰ In this regard, the court may order the GC to initiate civil proceedings to accomplish these purposes.

Within 10 days after receiving notice of the complaint, the tribunal's chief master shall select three members to serve as a trial panel of masters (the trial panel) to hear the complaint. Two members of the trial panel shall be lawyers and one a nonlawyer. The chief master will designate one of the two lawyer members of the trial panel to serve as presiding master of the hearing. Two of the three masters shall be a quorum for purposes of conducting hearings, ruling on and receiving evidence and rendering the trial panel's findings of fact and conclusions of law.⁶¹ The tribunal chief master will notify the respondent and the GC of the appointment and membership of the trial panel and the time and place for the hearing. The time of the hearing shall not be less than 30 days and not

more than 60 days from the date of the trial panel appointment.⁶² Extensions of the hearing date may be granted by the chief master for good cause.

The trial panel hearing, as well as Supreme Court disciplinary proceedings, are open to the public.⁶³ Trial panel proceedings are required to be stenographically recorded and transcribed unless the facts are stipulated.⁶⁴

Depositions may be taken and read, and documents and things may be required to be produced for inspection and copying in the same manner as civil cases.⁶⁵

Upon written request made 15 days before the hearing, the respondent – or any attorney for the respondent – shall be given the names and addresses of witnesses to be used by the prosecution. The GC, with the approval of the commission, has the authority to enter into stipulations of fact and law as to the complaint and a recommendation as to the discipline to be imposed.⁶⁶

The trial panel has the power and authority to administer oaths and affirmations, hear evidence and compel, by subpoena, the attendance of witnesses and the production of books, records, papers, documents or other tangible evidence, either for deposition or trial.⁶⁷ Oaths or affirmations may be administered and subpoenas may be issued by the presiding master of the trial panel or by another person authorized by law.⁶⁸ The trial panel may take necessary steps to maintain order in its sessions. The trial panel may certify to the chief justice of the Supreme Court matters of contemptuous refusal to obey the trial panel's lawful orders; the chief justice will then assign the case for trial and appropriate disposition to

a judge of a district court. The GC shall act as prosecutor against the alleged contemnor.⁶⁹

The respondent attorney may be called as a witness either by the prosecution or on their own behalf. The respondent may not, when called upon to give testimony, decline to answer any relevant question unless the respondent personally states the answer might disclose privileged matters or would tend to incriminate or show the respondent to be guilty of any act or offense that would be grounds for discipline.⁷⁰

The rules of civil procedure govern the disciplinary proceedings and the reception of evidence so far as is practicable.⁷¹ The charges against the respondent must be established by clear and convincing evidence, and at least two members of the trial panel must concur in the findings.⁷²

The trial panel must file a written report containing its finding of fact on all pertinent issues and conclusions of law within 30 days after the hearing ends. The 30-day period can be extended only by the chief justice for good cause shown. The report should contain recommendations as to discipline if discipline is indicated and whether the costs of the investigation, record and proceedings should be imposed on the respondent. This report – accompanied by all pleadings, a transcript of the proceeding and all exhibits – is to be concurrently served on the GC, the respondent and the respondent's attorney.⁷³

The chief justice shall set dates for submission of any briefs for a date not to exceed 60 days after receiving the trial panel's report. The Supreme Court is to consider these matters on an accelerated basis.⁷⁴ The Supreme Court may

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approve the trial panel's findings of fact or make its own independent findings, impose discipline, dismiss the proceedings or take such other action it chooses.⁷⁵ The clerk of the Supreme Court will give notice of the action or decision to the respondent, the tribunal, the GC and the commission.

When discipline results, the cost of the investigation, the record and the disciplinary proceedings are to be surcharged against the disciplined lawyer unless the Supreme Court remits them in whole or in part for good cause.⁷⁶ The disciplined lawyer must pay the costs within 90 days after the Supreme Court's order becomes effective. Otherwise, the disciplined lawyer will be automatically suspended from the practice of law until further order of the court.

The GC and respondent must file any petitions for rehearing with the clerk of the Supreme Court within 20 days from the date of mailing of the Supreme Court's decision or action.⁷⁷

RULE 7: SUMMARY DISCIPLINARY PROCEEDINGS, CRIMINAL CONVICTION

Rule 7 proceedings relate to the discipline of lawyers who have been criminally convicted of crimes that demonstrate unfitness to practice law in any jurisdiction. A conviction resulting from a plea of guilty or *nolo contendere* or from a verdict after trial is subject to discipline regardless of a pending appeal.⁷⁸

Oklahoma court clerks are required to transmit certified copies of the judgment and sentence on an attorney's plea of guilty, order deferring judgment and sentence, indictment or information and judgment and sentence of conviction to the chief justice

of the Supreme Court and the GC within five days after said conviction. The GC is also required to furnish these documents to the chief justice within five days of the GC's receipt. These documents, regardless of whether from an Oklahoma jurisdiction or any other, shall constitute the charge. The documents are conclusive evidence of the commission of the crime upon which the judgment and sentence are based. They suffice as the basis for discipline.⁷⁹

Upon receipt of the certified copies, the chief justice may order immediate suspension of the lawyer from the practice of law until further order. Alternatively, the court may direct the lawyer to file a statement to show cause why an order of immediate interim suspension should not be entered.⁸⁰ In the order of suspension, the court may direct the lawyer to file a statement to show cause why the order of suspension should be set aside. Upon good cause shown, and if in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the profession, the court may set aside its order of suspension. On the same basis and with the same considerations, the court may decline to enter an order of suspension if the lawyer shows good cause. If the lawyer does not, immediate suspension may occur.

The GC is required to inform the chief justice if the lawyer's conviction becomes final without an appeal. The court may order the lawyer on a specified date to show cause in writing why a final order of discipline should not be made. The lawyer shall submit a verified written return and expressly state if a hearing is requested. In the interest of explaining their conduct or in mitigation, the lawyer may

submit a brief and/or any evidence tending to mitigate the severity of discipline. The GC may respond by submission of a brief and/or any evidence supporting the recommendation of discipline.⁸¹

If the judgment of conviction is reversed on appeal, the disciplinary proceedings based on the conviction shall be immediately dismissed. If the conviction is affirmed on appeal or affirmed as modified and the lawyer remains convicted of a crime demonstrating unfitness to practice law, the above procedures apply to make final disposition of the matter.⁸²

The commission is not precluded from initiating and conducting disciplinary proceedings identical to those in a criminal complaint, indictment or information, despite the pendency of the criminal action. Certified or authenticated copies of the record and transcripts of testimony and evidence from the criminal action are admissible in the disciplinary proceeding.⁸³

DISCIPLINARY PROCEEDINGS IN OTHER JURISDICTIONS

The GC is required to transmit certified copies of final adjudications in disciplinary proceedings of lawyers who are disciplined in other jurisdictions within five days of receiving the documents. These documents shall constitute the charge and are *prima facie* evidence that the lawyer committed the acts described. The chief justice shall direct the lawyer to show cause, in writing, why a final order of discipline should not be made. The lawyer's written response must be verified and expressly state whether a hearing is requested. To explain the conduct and for mitigation, the lawyer may submit a brief and/or

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Rule 7 proceedings relate to the discipline of lawyers who have been criminally convicted of crimes that demonstrate unfitness to practice law in any jurisdiction. A conviction resulting from a plea of guilty or *nolo contendere* or from a verdict after trial is subject to discipline regardless of a pending appeal.⁷⁸

evidence tending to mitigate the severity of discipline. The lawyer may submit a certified copy of any transcripts of the evidence taken during disciplinary proceedings in the other jurisdiction to support a claim that the finding of the other jurisdiction was not supported by evidence or does not furnish sufficient grounds for discipline in Oklahoma. The GC may respond by submission of a brief and/or any evidence supporting a recommendation of discipline. The Oklahoma Supreme Court may refer the matter for additional evidentiary hearings before the tribunal if deemed necessary.⁸⁴

WILLFUL NONPAYMENT OF CHILD SUPPORT

An attorney's willful noncompliance with orders of support, as determined by a judicial finding, is also a basis of discipline as described in the RGDP.⁸⁵

RESIGNATION

Lawyers can avoid disciplinary proceedings if they resign, pending disciplinary proceedings. However, doing so precludes seeking reinstatement for five years from the effective date of resignation.⁸⁶

OBA DISCIPLINE IN 2023

The annual report of the commission for Jan. 1, 2023, to Dec. 31, 2023, is available on the OBA website and is titled "Annual Report of the Professional Responsibility Commission as Compiled by the Office of the General Counsel of the Oklahoma Bar Association," filed with the Oklahoma Supreme Court on Feb. 2, 2024, SCBD #7624.

Of the 18,734 lawyers who were OBA members at the close of the reporting period, 1,124 grievances (215 formal grievances and 909 informal grievances) were received against 872 lawyers. Less than 5% of OBA membership received grievances. "Informal" grievances can usually be handled

by correspondence. "Formal" grievances are those that require opening an investigation. An investigation may entail obtaining court documents, bank records, witness statements and usually interviews of both the grievant and the attorney. Some grievances are designated as formal upon receipt when the need to open an investigation is apparent. Others that initially indicate as informal can become formal, including when an attorney fails to timely respond.

The commission administered private reprimands to 21 lawyers involving 25 grievances and issued letters of admonition to 22 lawyers involving 23 grievances. The commission voted to file formal disciplinary charges against 15 lawyers involving 40 grievances and oversaw the investigation of 16 Rule 7 formal disciplinary charges filed with the chief justice. The commission dismissed 13 grievances, four due to not concluding the process due to death, disbarment, resignation and a lengthy suspension and the remainder due to the lack of clear and convincing evidence. The commission referred 21 lawyers involving 29 grievances to the Discipline Diversion Program.

The alleged misconduct in 2023 for the 215 formal grievances entailed 44% for neglect, 13% for personal behavior, 13% for fraud, 8% for trust account overdraft, 7% for conflict and other categories with far lower percentages. The practice areas comprising the 215 formal grievances entailed 23% in family law, 21% in criminal law, 13% in litigation, 10% in estate/probate law and other categories with far lower percentages. The largest number of grievances, at 39%, were against lawyers who have been in practice for 26 years

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or more. Interestingly, only 6% were against lawyers in practice for five years or fewer.

CONCLUSION

In a perfect professional world, no meritorious grievances would be filed because there would be no misconduct. But almost 5% of Oklahoma attorneys do draw grievances. So what is an attorney to do if that envelope comes? Should one arrive in the stack of mail, maintaining an appropriate perspective is useful. The 2023 story of the OBA discipline of its attorneys is enlightening. It is clear from that information that the OBA is not playing a “gotcha” game with its attorneys. Its goal is to protect the public, and responsible self-regulation of the legal profession is the formula to do so. If a grievance comes, it is highly likely, according to 2023 numbers, that it will be dealt with as an informal grievance without the need for an investigation. The OBA Discipline Diversion Program can be an off-ramp for lesser misconduct and affords services to allow correction and improvement. If numbers are informative, perhaps attorneys practicing in the areas of family and criminal law and working 26 years or more should be the most vigilant to avoid neglect of client matters. Attorneys who do receive grievances are best served by handling the grievance timely with full disclosure and in compliance with the RGDP.

ABOUT THE AUTHOR



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Responsibility Tribunal and on the Board of Editors for the *Oklahoma Bar Journal*.

ENDNOTES

1. Chorus of “Bad Boys,” by Inner Circle. For purposes of this article, the term “boys” indicates humans with licenses to practice law in Oklahoma.
2. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.5.
3. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.5.
4. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.6.
5. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.4.
6. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.8.
7. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.7.
8. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.1.
9. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.9.
10. 5 O.S. 2021, ch. 1, app. 1-a.
11. 5 O.S. 2021, ch. 1, app. 1-a, Rule 1, sec. 1.1.
12. 5 O.S. 2021, ch. 1, app. 1-a, Rule 1, sec. 1.3.
13. 5 O.S. 2021, ch. 1, app. 1-a, Rule 1, sec. 1.5.
14. A well-researched and thorough history and background of this present-day structure is the subject of a previous *OBJ* article, “Attorney Discipline in Oklahoma: A Historical Perspective,” William R. Grimm, 2015 *OBJ*, vol. 86, no. 33.
15. 5 O.S. 2021, ch. 1, app. 1-a, Rule 3, sec. 3.1.
16. 5 O.S. 2021, ch. 1, app. 1-a, Rule 3, sec. 3.2.
17. 5 O.S. 2021, ch. 1, app. 1-a, Rule 3, sec. 3.2 (a).
18. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.1.
19. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.1.
20. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.6.
21. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.2.
22. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.8.
23. 5 O.S. 2021, ch. 1, app. 1-a, Rule 4, sec. 4.1.
24. 5 O.S. 2021, ch. 1, app. 1-a, Rule 4, sec. 4.5.
25. 5 O.S. 2021, ch. 1, app. 1-a, Rule 4, sec. 4.2.
26. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.1.
27. *State ex rel Oklahoma Bar Association v. Krug*, 2004 OK 28, 92 P.3rd 67.
28. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.2.
29. *Id.*
30. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.3.
31. *Id.*
32. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.4.
33. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.2.
34. 5 O.S. 2021, ch. 1, app. 1-a, Rule 2, sec. 2.8 (d).
35. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.2.
36. 5 O.S. 1921, ch. 1, app. 1-a, Rule 13, sec. 13.1.
37. 5 O.S. 2021, art. II, sec. 1.
38. 5 O.S. 2021, app. 3-a, Rule 8.1. The comment to OPRC 8.1 provides that the duty imposed by the rule applies to the attorney’s own discipline as well as that of others. Knowingly making a misrepresentation or omission is thus a separate professional offense. The comment further provides that the rule is subject to provisions of the Fifth Amendment to the U.S. Constitution and corresponding provisions of state constitutions. Reliance on this provision is required to be openly declared.
39. 5 O.S. 1921, app. 3-1, Rule 8.3 (a); The comment to Rule 8.3 indicates “substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.
40. 5 O.S. 1921, ch. 1, app. 1-a, Rule 7, sec. 7.7.
41. *State ex rel. Oklahoma Bar Association v. Reedy*, 2023 OK 99; “A New Duty to Self-Report Certain Convictions,” Richard Stevens, 2024 *OBJ*, vol. 95, no. 2.
42. 5 O.S. 1921, ch. 1, app. 1-a, Rule 5, sec. 5.1(c), (d).
43. 5 O.S. 2021, app. 3-a, Rule 8.4 (a), (b), (c), (d).
44. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.1(c).
45. “The OBA’s Discipline Diversion Program,” William R. Grimm, 2011 *OBJ*, vol. 82, no. 33.
46. 5 O.S. ch. 1, app. 1-a, Rule 5, sec. 5.1(i).
47. 5 O.S. ch. 1, app. 1-a, Rule 5, sec. 5.1(h).
48. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.1(e).
49. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.1(f).
50. 5 O.S. 2021, ch. 1, app. 1-a, Rule 5, sec. 5.1(j).
51. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.1, 6.2.
52. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.3.
53. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.2A (4).
54. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.4.
55. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.1.
56. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.5.
57. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.2A(1).
58. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.2A(a), and Rule 13, sec. 13.1.
59. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.2A(2)(a)(b).
60. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.2A(3)(a).
61. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.6.
62. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.7.
63. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.9.
64. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.10.
65. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.8.
66. *Id.*
67. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.11(a).
68. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.11(b).
69. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.11(c).
70. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.11(d).
71. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.12(a).
72. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.12(c).
73. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.13.
74. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.14.
75. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.15.
76. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.16.
77. 5 O.S. 2021, ch. 1, app. 1-a, Rule 6, sec. 6.15(c).
78. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.1.
79. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.2; *State ex rel. Oklahoma Bar Association v. Zannoti*, 2014 OK 25, 330 P.3rd 11.
80. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.3.
81. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.4.
82. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.5 and 7.4.
83. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.6.
84. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.7.
85. 5 O.S. 2021, ch. 1, app. 1-a, Rule 7, sec. 7.8, 7.9, 7.10.
86. 5 O.S. 2021, ch. 1, app. 1-a, Rule 8, sec. 8.1.

THURSDAY & FRIDAY,
DEC. 19 & 20, 2024

9 a.m. - 3:05 p.m.
Oklahoma Bar Center, OKC

Live Webcast Available



2024 ADVANCED BANKRUPTCY

Cosponsored by the OBA Bankruptcy and Reorganization Section

JOIN US FOR INSIGHTFUL DISCUSSIONS FROM

DAY 1 – SPEAKERS

Karen Walsh, *Assistant U.S. Trustee, Northern and Eastern Districts of Oklahoma*
MJ Creasey, *Assistant U.S. Trustee, Western District of Oklahoma*
Lacey Bryan, *Markus Williams Young & Hunsicker, Denver, CO*
Anne Zoltani, *Clerk of Court, U.S. Bankruptcy Appellate Panel of the Tenth Circuit*
Trey Monsour, *Partner, Fox Rothschild, Las Vegas, NV*
Ron Brown, *The Brown Law Firm PC, Tulsa, OK*

DAY 2 – SPEAKERS

Susan M. Freeman, *Partner, Lewis Roca Rothgerber Christie, Phoenix, AZ*
Brandon Bickle, *Shareholder, GableGotwals, Tulsa, OK*
Judge Terrence Michael, *Chief Judge, Northern District of Oklahoma*
Judge Bianca Rucker, *Eastern and Western Districts of Arkansas*
Clif Gooding, *The Gooding Law Firm PC, Oklahoma City, OK*
Chief Judge Sarah Hall, *Western District of Oklahoma*
Chief Judge Paul R. Thomas, *Eastern District of Oklahoma*
Chief Judge Terrence L. Michael, *Northern District of Oklahoma*
Judge Bianca M. Rucker, *Eastern and Western Districts of Arkansas*

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

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Speakers and topics subject to change

Oklahoma Supreme Court Announces 2025-2026 Leadership

THE OKLAHOMA SUPREME Court recently announced it has elected Justice Dustin P. Rowe of Tishomingo to serve as chief justice for a two-year term to begin Jan. 1, 2025. Justice Dana Kuehn was elected to serve as vice chief justice for the same biennium.

Gov. Stitt appointed Justice Rowe to the Oklahoma Supreme Court in 2019, where he served as vice chief justice since January 2023. Prior to his appointment to the Oklahoma Supreme Court, Justice Rowe practiced law in Tishomingo and served as district judge for the Chickasaw Nation District Court.

Justice Kuehn was appointed to the Oklahoma Supreme Court in July 2021 by Gov. Stitt. Prior to her appointment, Justice Kuehn of Tulsa had worked for the Tulsa County District Attorney's Office from 1996 to 2006, served as a judge in Tulsa



Justice Dustin P. Rowe

County from 2006 to 2017 and was appointed to the Oklahoma Court of Criminal Appeals in 2017, where she served until her appointment to the Supreme Court in July 2021.



Justice Dana Kuehn

The Oklahoma Constitution provides that the justices of the Supreme Court shall “choose from among their members a Chief Justice and a Vice Chief Justice.”

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.



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.

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

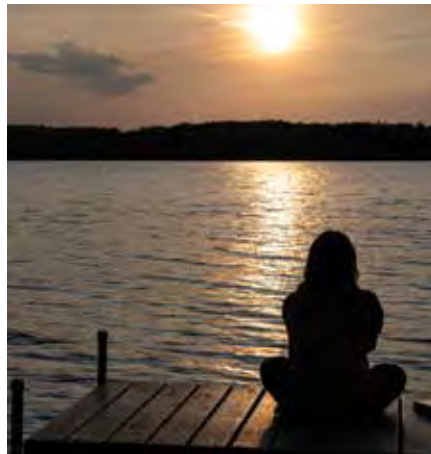
Looking Back While Looking Ahead

By Janet Johnson

AS I REFLECT ON THIS successful year at the Oklahoma Bar Association, I am reminded of many achievements as well as the growth that we have experienced along the way. This past year has been particularly rewarding, characterized by significant outreach, meaningful membership engagement and an ongoing commitment to justice.

One of the standout achievements was our strengthened fellowships with many county bar associations as our Board of Governors continued their traveling board meetings in 2024. We visited with bar members in Canadian, Carter, Delaware, Garfield and Ottawa counties this year, and each visit presented a unique opportunity to get to know our fellow members while learning more about them and their unique strengths and challenges. I am always grateful for this opportunity for fellowship and sharing knowledge with other legal practitioners. This collaboration enhances our understanding of the ever-evolving legal landscape, and it helps us all stay nimble and adaptable in our ability to respond.

This year also provided numerous opportunities for our Membership Engagement Committee to take a deep dive into what members need. This committee is also looking ahead –



finding ways to connect with future lawyers through outreach to students in our state's three law schools. This group has taken the lead in brainstorming creative events and activities to help our members stay better connected to each other and the profession. They have also been instrumental in developing surveys that help us better understand our membership's preferences. I am so appreciative of this group's time and efforts, and I am looking forward to seeing what they will accomplish in 2025.

Another major highlight this year was our Board of Governors' work to refresh the OBA Strategic Plan. Our strategic planning retreat in Ardmore was an opportunity to reinvigorate our commitment to justice for all Oklahomans, as well as affirm our dedication to legal education and advancement of the administration of justice. It

is a privilege as well as a responsibility to increase understanding of the law among both the legal community and the public at large. Be on the lookout for more information on these critical topics in 2025, and help us share this knowledge in your own networks of lawyers and laypersons.

As I look ahead, the successes of this year serve as a foundation for future aspirations. Building on the momentum that was established in 2024, our goals include even more robust membership engagement, continuing to travel to nonmetro areas of the state for many board meetings and continuing to engage in outreach and education on the legal profession and its role in the administration of justice. I am confident that together we will enjoy a very productive and rewarding 2025.

I wish you and your family peace, health and happiness during this December holiday season.



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



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!



What Is Your Cybersecurity Defense Plan for 2025?

By Jim Calloway

THE OKLAHOMA RULES of Professional Conduct offer guidance and rules for lawyers confronting ethical challenges. Technological advances often progress more quickly than legislative or regulatory responses to these developments. So where technology is involved, some of our ethical obligations tend to change and evolve before any new rules can be written.

For almost every lawyer reading this, the possibility of a major digital attack is a potential threat to your law firm's operations. Imagine showing up to work and finding that every computer in the office has had its data encrypted – and even though the provider said it wouldn't, it also took out the office VoIP phone system.

We, as a profession, must now always consider cybersecurity to protect our clients' confidential data as well as our business operations, which benefit both the law firm and the clients. As one calendar year ends and another begins, take this opportunity to examine and increase your safeguards against cybercrime.

THE IMPORTANT INITIAL DECISION ABOUT YOUR CYBERDEFENSE STRATEGY

In the Nov. 13 issue of *Courts & More*, I posted "Does Game Freak's Lack of Response to Malware

Attack Hold Lessons for Lawyers?"¹ I encourage you to read it.

Game Freak was hacked and apparently did not pay the ransom. Kavi Sivasothy, a Canadian lawyer, analyzed why this large company with mostly digital assets might have behaved that way and concluded that they planned on not paying a future ransom.

Mr. Sivasothy wrote: "Now, not every organization can just say 'no' to a ransom demand. A hospital has to consider very different factors than a dry-cleaner. But regardless of what business they are in, there are core steps every organization should be proactive in taking to maximize their opportunity to say 'no' when being extorted by a hacker."²

That is your most important business decision going forward. If your law firm is hit with a cyberattack that shuts down your systems, are you going to pay the ransom? Our concerns are closer to the hospital than the dry cleaner, but every business wants to return to operations after an interruption as soon as possible.

Today, ransomware demands are rarely in the four-figure range – they are more likely five or six figures. In the early days of this type of crime, the people running the ops were – to use an inappropriate term – more professional, and there was a decent chance your data

would be restored. That is less true today. Suppose payment of the ransom is accepted, and you receive several digital keys to decrypt your data. Does anyone in your firm have the expertise, plus the nerve, to handle that? Therefore, the firm will be paying more for additional external support.

If you believe the ransom amount may influence your decision to pay and your firm possesses the necessary assets or credit lines to cover a ransomware attack, it would be prudent to consider obtaining a cyber insurance policy that includes coverage for damage remediation. I have little information about the insurance market. I know this coverage is expensive, and the application process may require upgrading parts of your systems, which is most likely a good thing. But we all appreciate that an insurance policy that provides both funds and expertise to repair your network is the best way to avoid paying the ransom, and it is also more likely to restore law firm operations more quickly.

As with many risks in life, insurance is the best answer if you can afford it. Realistically, these premiums are not affordable for all law firms. For some, the decision is that the firm can't afford cyber insurance, or paying for it would significantly impair



the firm's operations. But if so, it is also probable that your firm would not pay a ransom.

WE CAN'T OR WON'T PAY THE RANSOM

I would predict most of the lawyers reading this would be in the "will not pay" category, whether it is uncertainty, lack of funds, lack of technical expertise in decryption or resistance to funding criminal activities. My goal in this column is to convince those law firms to accept that fact so they can move on to preparing for recovery in the event of an attack.

Please read Mr. Sivasothy's article³ for an excellent brief overview of your next steps, then review your own systems to prioritize what you should do first. It may be that some outside IT consulting help is required.

Let's take a worst-case scenario: a firm at high risk for an attack. Consider a small law firm with little in-house technology expertise beyond Word and the billing system. They are still running

Windows 10 on one computer, even though they know they shouldn't. The subscription to the online backup service and security services were both accidentally canceled when the law firm's credit card was compromised, and the person who set those up no longer works for the firm. So what does this law firm do in a high-risk situation? They must first prioritize protecting client data. Before we protect the castle, we must ensure the crown jewels are safe.

For emergency triage, there are two broad paths:

- 1) You subscribe to a secure cloud storage service and move your data there. (Secure, in most cases, means you are paying for it.)
- 2) You send someone to the local big-box store or go online to buy several portable hard drives – hopefully, one for each computer in the law firm. Then, copy the data onto the portable hard drives. There are

instructions, and some drives even include simple software. Unplug the drive when finished. Do not store the drive in the office. Now, you have backups as of that day, and you can decide how often you want to update your backup.

Those are triage plans, which are not intended to be permanent solutions. So let's discuss building your cybersecurity defenses/recovery systems.

GREAT DEFENSE WINS CHAMPIONSHIPS

Let's note that preparing for a future recovery from an attack does not mean abandoning your defenses. You will need to maintain a firewall, an antivirus solution, email spam filters (because this will often block email threats, not just advertisements) and mandatory password managers to facilitate everyone using long, secure passwords.

Multi-factor authentication (MFA) is essential for security today, even if we are tired of looking at our phones (or whatever method is employed) when we want to log in to a website. Today, it is critical to use MFA to protect online bank or investment accounts, as well as any shopping site with your credit card information stored. Client information should also be guarded by MFA.

SAFELY STORE YOUR CLIENT'S DATA

Cloud-Based Practice Management Systems

We believe that for most lawyers in medium- to small-sized law firms, the best recovery solution is also your best system to improve day-to-day operations – a subscription to a cloud-based management tool. A practice management system (PMS) doesn't just provide a backup of the data, but it is also a tool to avoid business interruptions. What if everyone arrives at the office, but there is no power, and the utilities indicate restoration will take hours? All lawyers should have a laptop that allows them to log in to the PMS from home, enabling them to work remotely. Some staff may also do the same. It is advisable to determine in advance who will stay at the office instead of deciding during an emergency situation.

PMS providers invest millions into security and hire numerous security experts and engineers. They monitor new threats. They were designed from the outset to securely hold client data for lawyers and have a good track record.

Microsoft OneDrive

OneDrive is a secure digital storage platform that is part of Microsoft 365 and usually comes with one terabyte of storage. So it is a great solution in many situations.

Other Secure Storage Providers

There are many providers of digital storage. This is a service you will need to purchase, with Dropbox being one conspicuous exception. Some people are skeptical of Dropbox, but as long as you set it up properly with MFA and a very long password, it is likely as secure as any. ShareFile is also a secure solution.

While lawyers might have been initially hesitant about embracing cloud storage of important documents, we have now come to understand that usually, an appropriately vetted and secured cloud storage provider offers better security and backup than many law firms can accomplish on their own. Regular backups, hopefully to a secure cloud-based site, are still critical both to protect client information and to provide

business continuity for the firm in the event of a breach.

LAW FIRM CYBERSECURITY AWARENESS TRAINING

Today, many, if not most, serious threats arrive in your inbox. Artificial intelligence allows for more sophisticated phishing attacks. Since everyone in your firm uses email, they all (including the lawyers) should have regular cybersecurity awareness training at least annually, if not semi-annually.

"Training for Employees Has Never Been More Critical,"⁴ is a detailed outline for in-office cybersecurity training written by Michael Maschke, Sharon Nelson and John Simek. As many of you are aware, Sharon was my podcast teammate for many years, and recently, she and John announced their retirement from Sensei Enterprises Inc. But this guide should help you get started with in-house training.

WHO GETS ACCESS TO WHAT?

Permissions to access certain data have rarely been implemented in smaller law firms, which is understandable with a staff who may work for any of the lawyers. But artificial intelligence tools, like Microsoft Copilot, have pointed out the flaw in not attaching permissions to sensitive

The OBA provides an online resource to help you stay vigilant. Visit www.okbar.org/scams to track current and evolving scams.

documents, as associates using the tool have stumbled onto the payroll and bonus information they were not intended to see.

Sometimes, when the firm represents someone with a high profile or the matter is making headlines frequently, it may be wise to restrict information within the firm to those working on the matter. This should not be taken as a sign of any mistrust related to your team, but removing temptations can be the best practice.

CHECK FRAUD AND WIRE FRAUD

These schemes are fairly easy to recognize because they involve the same elements. A large cashier's check appears in the office after minimal to no legal work has been done, and it is deposited in the trust account. After a rather convincing exchange of emails and sometimes phone calls, a miracle happens. The matter resolves quickly – suspiciously quickly, in fact – and the client wants the money and offers you a stunning attorney fee you can keep if you get that money wired out today.

When you look at these facts, it is almost certainly a scam. But the client will become indignant and start mentioning the bar association if you don't wire it out today.

Today, the best practice is to do your investigation in advance before accepting the matter. They will send you information referring to real companies, but they don't have the resources to do anything more than send you emails and call you. So, often, a few telephone calls to people or businesses named in the solicitation email will expose the fraud. Cited cases often do not match the numbering system for the court.

CRAFTING AN INCIDENT RESPONSE PLAN

The incident response plan will serve your firm well in times of emergency. There are forms online for these plans, which may suggest items for you to cover. But this should not be just completing a form. You need to include your priorities in your plan, with contact information for your insurance company, outside technical assistance, all staff and maybe even that nearby lawyer who owes you a favor and usually has an empty office or two in their suite. Be sure to store several copies off-site.

OBA RESOURCES

December is the season for an uptick in fraudulent activity as the holidays approach. The OBA provides an online resource to help you stay vigilant. Visit www.okbar.org/scams to track current and evolving scams.

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

ENDNOTES

1. <https://bit.ly/3OaHpzl>.
2. <https://bit.ly/3YQssb3>.
3. *Id.*
4. *Attorney at Work*, "Law Firm Cybersecurity Awareness: Training for Employees Has Never Been More Critical," <https://bit.ly/3Z4mrc2>.

Meeting Summary

The Oklahoma Bar Association Board of Governors met Oct. 18.

REPORT OF THE PRESIDENT

President Pringle reported he attended the joint reception with the Canadian County Bar Association and participated in swearing in nearly 300 new OBA members at the state Capitol. He also participated in multiple meetings of the Bar Center Facilities Committee, worked on planning the OBA Board of Governors holiday party and wrote his monthly article for the November *Oklahoma Bar Journal*. He met with legislators regarding the Judicial Nominating Commission and with justices regarding the proposed 2025 association budget. He also discussed *Keller* policy issues with counsel and reviewed advertisements related to the judicial retention ballot, as well as appropriate OBA responses.

REPORT OF THE PRESIDENT-ELECT

President-Elect Williams reported he met with Supreme Court justices regarding the association's 2025 budget, worked on various appointments and virtually participated in an Oklahoma Attorneys Mutual Insurance Co. Underwriting Committee meeting regarding proposed policy changes. He also virtually attended the Membership Engagement Committee meeting and the joint reception with the Canadian County Bar Association. He virtually conferred with the

Executive Committee and outside counsel regarding *Keller* policy issues and reviewed recent advertisements regarding judicial retention questions for upcoming elections and provided input on potential association responses.

REPORT OF THE VICE PRESIDENT

Vice President Peckio reported she attended the joint reception with the Canadian County Bar Association. She also reviewed the Audit Report and participated in the Audit Committee meeting. She discussed *Keller* policy issues with counsel and reviewed advertisements related to the judicial retention ballot, as well as appropriate OBA responses.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended the Women in Law Conference, where she received a Mona Salyer Lambird Spotlight Award. She also attended Bar Center Facilities Committee meetings, weekly meetings with the OBA strategic planning consultant, the Membership Engagement Committee meeting, the swearing-in ceremony for new admittees, the joint reception with the Canadian County Bar Association, the September YLD meeting and the CLE Movie Night with the Supreme Court. Additionally, she presented during a legislative interim study on the Judicial Nominating Commission and discussed the

JNC with legislators. She met with justices regarding the 2025 association budget, continued working on 2025 joint events, worked on continued HVAC improvements to the Oklahoma Bar Center, worked on the Lawyers Helping Lawyers contract to clarify and manage expectations and met with the State Bar of Texas regarding upcoming potential member benefits. She also attended the National Association of Bar Executives roundtable regarding the *Keller* policy. She discussed *Keller* policy issues with counsel and reviewed advertisements related to the judicial retention ballot, as well as appropriate OBA responses.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Hermanson reported he attended and presented at the Oklahoma Attorney General's Domestic Violence Awareness Awards ceremony. He also attended the Kay County Drug Store organizational meeting and the joint reception with the Canadian County Bar Association. Additionally, he participated in discussions about the judicial retention election, testified at the Oklahoma House of Representatives Interim Study on Public Corruption and reviewed litigation expenses related to OBA matters. He reminded the board that the Kay County Courthouse is hosting an open house on Oct. 22 and invited everyone to see the newly remodeled building.

BOARD MEMBER REPORTS

Governor Ailles Bahm reported she attended the Lawyers Helping Lawyers Assistance Program Committee meeting, the Council on Judicial Complaints meeting, the Audit Committee meeting and a meeting of former Oklahoma County Bar Association presidents. **Governor Barbush** reported by email he reviewed the Auditor's Report and attended the Audit Committee meeting. **Governor Conner** reported he has been working with the Garfield County Bar Association to plan the joint reception with the Board of Governors to be held in conjunction with the November meeting in Enid. **Governor Dow** reported she attended the Cleveland County Bar Association meeting, the Oklahoma County Family Law Section meeting and the Disaster Response and Relief Committee meeting. She also attended the meet-and-greet event at the Mary Abbott Children's House and toured Cleveland County judges' offices around the facility. **Governor Hixon** reported he attended the Audit Committee meeting and the joint reception with the Canadian County Bar Association. **Governor Knott** reported she has been working with Canadian County Bar Association officers to plan the joint reception with the Board of Governors at the historic Czech Hall in Yukon. **Governor Locke** reported he attended the Membership Engagement

Committee meeting. **Governor Oldfield** reported he attended the Audit Committee meeting and the joint reception with the Canadian County Bar Association. **Governor Rogers** reported by email he reviewed the Auditor's Report and attended the Audit Committee meeting. He also attended a TU College of Law Alumni board meeting, several Bar Facilities Committee meetings and the Clients' Security Fund meeting. **Governor Trevillion** reported by email he attended the Oklahoma County Bar Association meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Talbert reported the YLD met in September and co-hosted a successful CLE with the Animal Law Section. They are currently planning another CLE, and Taylor Venus is working on additional CLEs around the state in conjunction with different sections.

REPORT OF THE GENERAL COUNSEL

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

BOARD LIAISON REPORTS

President-Elect Williams said the **Investment Committee** will meet before the end of the year. Vice President Peckio

reported the Strategic Planning Committee met recently. Governor Oldfield reported the **Legal Internship Committee** and the **Professionalism Committee** are both active and meeting. Governor Dow said the **Disaster Response and Relief Committee** met recently. She also said President Pringle and Executive Director Johnson met with past **Diversity Committee** Chair Kara Smith to discuss reestablishing the committee and recruiting a new chair. Governor Hixon said the **Law Day Committee** voted by email to adopt the ABA 2025 Law Day theme, "The Constitution's Promise: Out of Many, One." The committee also voted to approve a contract with Smirk New Media to advertise the upcoming annual art and writing contests. Governor Locke reported the **Membership Engagement Committee** recently met and is brainstorming ways to get law students connected early on, and they are working on updating the free legal information brochures. Governor Talbert added she thinks what the committee is doing is working because she has received several emails from young lawyers about how to get more involved with the bar and the YLD. Governor Knott made the report for the **Bar Center Facilities Committee**; Executive Director Johnson added that Governor Rogers, who has experience in construction litigation, has recently joined the committee and will review the architectural form.

Governor Ailles Bahm said the Bench and Bar Committee has sunk its teeth into the legal desert issue and will work to advance that in terms of education to judges and others.

Governor Ailles Bahm said the **Bench and Bar Committee** has sunk its teeth into the legal desert issue and will work to advance that in terms of education to judges and others. She also said the **Lawyers Helping Lawyers Assistance Program Committee** is meeting regularly; she added that the Oklahoma Bar Foundation granted the Lawyers Helping Lawyers Foundation \$200,000 toward their efforts to hire a director and has received input and advice on what the director's role and responsibilities should be. She also said the committee and foundation are continuing to work on aligning their focuses.

DISCUSSION AND APPROVAL OF 2025 BUDGET AND PERSONNEL SCHEDULE

The board approved a motion to approve the submission of the proposed 2025 budget to the Supreme Court.

REPORT FROM AUDIT COMMITTEE AND PRESENTATION AND APPROVAL OF 2023 AUDIT REPORT BY SMITH CARNEY

The board approved a motion to approve the annual Audit Report.

WOMEN IN LAW SECTION REQUESTS AMENDMENT TO ITS BYLAWS

The board approved a motion to approve the section's request to amend its bylaws to align the section's annual leadership transition with the calendar year.

RESPONSE TO THE SPRING 2024 NETWORK INCIDENT

The board approved a motion to approve the OBA's position in response to the April network event.

DISCUSSION OF THE OBA'S PUBLIC POSITION REGARDING THE 2024 JUDICIAL RETENTION BALLOT

The board approved a motion to approve communications regarding judicial retention issues.

PRESIDENT-ELECT'S APPOINTMENTS

Audit Committee: President-Elect Williams appoints Governor Jana Knott, El Reno, and Governor Nicholas Thurman, Ada, to terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025.

UPCOMING OBA AND COUNTY BAR EVENTS – 2024

President Pringle reviewed upcoming bar-related events, including the joint reception with the Garfield County Bar Association in November and the Board of Governors meeting and holiday party in December.

NEXT BOARD MEETING

The Board of Governors met in November, 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, Dec. 13, in Oklahoma City.

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v|lex fastcase

Introduction to vLex Fastcase

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The OBA has long partnered with Fastcase to provide high-quality online legal research as a no-cost member benefit. Now, the software has been upgraded to vLex Fastcase, which can further equip Oklahoma lawyers with faster, even more powerful research tools. Plus, it now includes many new features, including a custom news feed, the robust Cert citator and AI-driven features.

Dive into the upgraded legal intelligence platform during this free webinar training. Register online at <https://bit.ly/3CMgjsf>.



Road to Giving Campaign

Giving Back to Those Who Give

THROUGHOUT NOVEMBER, the Oklahoma Bar Foundation embarked on a heartfelt Road to Giving campaign in honor of Giving Tuesday. The goal was to celebrate the impact of the non-profits we support and give back to those who give. The OBF staff and board members hit the road, visiting three outstanding organizations that provide essential services across Oklahoma:

- Wings of Hope in Stillwater is dedicated to empowering survivors of domestic violence with comprehensive support services.
- The Center for Children and Families in Norman strengthens families through vital mental health and wellness resources.

- The CARE Center in Oklahoma City is a child advocacy organization that works tirelessly on abuse prevention and intervention.

These visits celebrated the inspiring work of each organization, with meaningful conversations, surprises and shared moments that brought both smiles and tears. In addition, the OBF sent surprise gift boxes to all other grantees, spreading joy and appreciation across our network. You can relive the epic journey by watching the videos on the OBF's Facebook, Instagram and LinkedIn accounts.

This Giving Tuesday, consider supporting the OBF in its mission to fund even more impactful grants in 2025 by making a donation at okbarfoundation.org/donate.



OBF Trustee Alison Cave gives an interview for a social media video featuring the Center for Children and Families.



OBF Executive Director Renee DeMoss presents Wings of Hope staff with the OBF book 75 Years of Impact and Beyond, which features their client story.



From left CARE Center staff with OBF Trustee Dylan Erwin, OBF staff members Jessi Hesami and Deb Holt, and OBF Trustee April Moaning

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.

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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.

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FOR YOUR INFORMATION

MEMBER DUES STATEMENTS ARE AVAILABLE ONLINE

In an effort to save money and cut down on the cost of printing and postage, the OBA Membership Department has posted member dues statements online in MyOKBar. As a follow-up, a paper statement was mailed around the first of December to members who had not yet paid. Please help the OBA in this effort by paying your dues today! Members can pay their dues by credit card online at MyOKBar at ams.okbar.org or by mailing a check to the OBA Dues Lockbox, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Thursday, Jan. 2, 2025.

MCLE DEADLINE APPROACHING

Dec. 31 is the deadline to earn any remaining CLE credit for 2024 without having to pay a late fee. The deadline to report your 2024 credit has been extended to Feb. 18 due to the Presidents Day holiday weekend. As a reminder, the annual ethics requirement is now two credits per year. The 12 total annual credit requirement did not change. Not sure how much credit you still need? To access your MCLE information, log in to your MyOKBar page and click "MyMCLE." Still need credit? Check out great CLE offerings at ok.webcredenza.com. If you have questions about your credit, email mcle@okbar.org.




REMINDER: MANAGE YOUR MCLE COMPLIANCE THROUGH MYOKBAR

OBA members can check their MCLE compliance and report exemptions through one single sign-on to MyOKBar. This means Oklahoma lawyers will no longer need to log in with an additional password to a separate website for MCLE compliance. This simplified sign-on is more convenient and results in increased time savings for our membership. Visit your MyOKBar page at ams.okbar.org.



REMINDER: FASTCASE VERSION 8 UPGRADE TRAINING DEC. 6

The OBA has long partnered with Fastcase to provide high-quality online legal research as a no-cost member benefit. Now, the software has been upgraded to vLex Fastcase, which can further equip Oklahoma lawyers with faster, even more powerful research tools. Fastcase Version 8 is coming soon! Users will be notified by a pop-up when they have access to the new version. OBA members can learn what to expect from this upgrade during an upcoming webinar training on Friday, Dec. 6, from noon to 1 p.m. Learn more about the upgrade and register at <https://bit.ly/3Cf3fzw>.

IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Tuesday, Dec. 24, and Wednesday, Dec. 25, in observance of the Christmas holiday and Wednesday, Jan. 1, in observance of New Year's Day. The bar center will also be closed Monday, Jan. 20, in observance of the Martin Luther King Jr. Day holiday.

LHL DISCUSSION GROUPS TO HOST UPCOMING MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Thursday, Dec. 5, in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Thursday, Dec. 12, in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200.

The Lawyers Helping Lawyers Oklahoma City women's discussion group will meet on Thursday, Dec. 19, at the first-floor conference room of the Oil Center, 2601 NW Expressway.

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



LET US FEATURE YOUR WORK

We want to feature your work on “The Back Page” and the *Oklahoma Bar Journal* cover! 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.



THE HONORABLE DONNA DIRICKSON APPOINTED DISTRICT JUDGE

Gov. Kevin Stitt recently announced the appointment of the Hon. Donna Lynn Dirickson as the district judge for Oklahoma's 2nd Judicial District. Prior to the appointment, she served as associate district judge for District 2. Judge Dirickson earned her bachelor's degree from Southwestern Oklahoma State University and her law degree from the

OCU School of Law. Throughout her career, she has received numerous awards, including the OBA President's Award and OBA Family Law Judge of the Year. She also established the Family Recovery Court program, an initiative that supports families impacted by substance abuse issues.

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.



ON THE MOVE

Timothy Olsen has joined the law firm of Rhodes Hieronymus as of counsel. His practice will focus on mediation, arbitration and civil litigation. Mr. Olsen previously served as a district judge for 18 years before retiring.

Connor Ellis and **Rodrigo Carrillo** have joined the Oklahoma City law firm of Hornbeek Vitali & Braun PLLC as associates. Mr. Ellis received his J.D. from the OU College of Law in 2024. While in law school, he was active in the Black Law Students Association, the Sports and Entertainment Law Society and the Business Law Society. For the past two years, he worked as a law clerk for the firm. He will focus his practice on litigation with an emphasis on the defense of rural electrical cooperatives and Oklahoma municipalities. Mr. Carrillo received his J.D. from the OCU School of Law in 2017. He previously served as an assistant district attorney for Payne and Logan counties and in private practice in western Oklahoma, primarily with past OBA President David Petty. Mr. Carrillo also serves as a municipal judge in the Oklahoma panhandle. He will focus his practice on litigation with an emphasis on the defense of rural electrical cooperatives and Oklahoma municipalities, as well as continuing his probate and estate practice.

Brant M. Elmore has joined the Oklahoma State Bureau of Investigation as the chief legal officer. He also serves as the agency's liaison to the Oklahoma Legislature. Mr. Elmore previously held the

position of referee at the Oklahoma Supreme Court, served as a senior examiner on the Oklahoma Board of Bar Examiners, acted as assistant attorney general for the state's Multi County Grand Jury and prosecuted cases as assistant district attorney in Districts 7 and 21.

Allison S. Tien has joined the Oklahoma City office of Doerner, Saunders, Daniel & Anderson LLP as an associate attorney. Her practice primarily focuses on business and corporate transactions. Additionally, she handles intellectual property law matters, including the formation of business entities and drafting various agreements, patents, copyrights and trademark registrations. Ms. Tien received her J.D. from the OCU School of Law, where she was on the dean's list and the faculty honor roll. She was also honored with the CALI Excellence for the Future Award for First Amendment law and emerging technology.

Kyle Ashpole and **Quinn Weedon** have joined the law firm of Hall Estill as associate attorneys. Mr. Ashpole focuses on the areas of corporate services and banking practices. His experience includes working with state and local taxes, renewable energy and oil and gas companies. He received his J.D. from the OCU School of Law in 2022. Ms. Weedon joined the firm's litigation practice. She served for three years as a term law clerk for District Judge Charles B. Goodwin in the U.S. District Court for the Western District of Oklahoma.

She received her J.D. from the OU College of Law in 2021. During law school, she worked as a licensed legal intern for the Norman City Attorney's Office, where she prosecuted municipal charges and assisted in a range of governmental and litigation matters.

Jason D. Baker has joined the law firm of Drummond Law as of counsel. With over 20 years of legal experience, Mr. Baker practices in the areas of estate planning and probate, guardianship, real estate, oil and gas, commercial transactions and litigation. Mr. Baker will maintain his own practice in addition to working extensively with the firm in a dual role. He received his J.D. from the OU College of Law.

Jarvis De León has joined the law firm of Frasier, Frasier & Hickman LLP as a workers' compensation lawyer. He received his J.D. from the OCU School of Law earlier this year. During law school, he was on the faculty honor roll and received the Pro Bono Service Award. He served as president of the Hispanic Law Student Association and the Immigration Legal Society and was a member of the OCU Hispanic law journal, *La Prensa*.

R. Baxter Lewallen has joined the law firm of McAfee & Taft as an associate in the Litigation Group. His state and federal trial practice encompasses complex business disputes, construction and real estate disputes, trade secret litigation, oil and gas litigation, class actions and personal injury

matters. Mr. Lewallen graduated *summa cum laude* from the OCU School of Law in 2020.

Brantly J. Stockton and **Brett H. Burch** have joined the law firm of Lytle, Soulé & Felty PC. Mr. Stockton graduated from the OU College of Law in 2024, where he was a Comfort Scholar and a contributing author for the *American Indian Law Review*. He previously worked for the firm as an intern and now serves as an associate attorney. He practices in

the areas of commercial and general civil litigation. Mr. Burch is a senior associate whose practice focuses on workers' compensation insurance defense. He received his J.D. from the OCU School of Law in 2015, where he served as president of his class and vice president of the Student Bar Association. Prior to joining the firm, he practiced in the areas of general insurance defense litigation and workers' compensation defense, as well as performing title opinions and appellate work.

Cameron Skinner has joined the Oklahoma City office of Ogletree Deakins as an associate. She received her J.D. with highest honors from the TU College of Law in 2024.

KUDOS

Julie Miller was named chair-elect at the National School Attorneys Association Annual National Conference in Indianapolis. The organization is formed and governed by school attorneys and provides support, networking, training and

discussion opportunities to its members for the ultimate benefit of our nation's public schools and the students they serve. She is the deputy executive director and general counsel of the Oklahoma State School Boards Association.

HOW TO PLACE AN ANNOUNCEMENT:

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

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

Submit news items to:

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

Articles for the February issue must be received by Jan. 1.

IN MEMORIAM

John Thomas Cripps III of Sallisaw died Oct. 22. He was born Dec. 20, 1945, and was raised in Tulsa. Mr. Cripps received his J.D. from the OU College of Law in 1975 and served as an attorney and judge in Sallisaw for nearly half a century. Memorial contributions may be made to the Cripps Foundation.

Gary Johnston Dean of Pryor died Oct. 29. He was born Oct. 6, 1940, in Oklahoma City. Mr. Dean earned a bachelor's degree in business administration in 1964 from OU and received his J.D. from the OU College of Law in 1966. He began his 58-year legal career as an associate for the late Tony Jack Lyons before forming a partnership two years later. In 1982, he established a solo practice, focusing on criminal, corporate, civil and family law. He then joined the OBA Family Law Section, serving as secretary in 1992 and chair in 1998. Under his leadership, the Family Law Section grew to be the largest OBA section, and he received a Presidential Citation for his work. He was appointed a special judge for the 12th Judicial District, handling criminal and domestic matters. Mr. Dean retired in 2010 but resumed practicing law part-time from 2015 until February 2024. He was active in the Pryor Area Chamber of Commerce, the Pryor Lions Club and the Pryor Area Arts & Humanities Council, of which he was the founding

president. He also served as secretary and president of the Mayes County Bar Association and as general counsel for the Pryor Municipal Utility Board for 30 years. In 2015, Mr. Dean joined the Rotary Club of Pryor and was involved in various projects. He was also an active member of St. Martin of Tours Episcopal Church. Memorial contributions may be made to Rotary District 6110 Rotary Youth Leadership Awards or St. Martin of Tours Episcopal Church.

John Nicholas Hermes of Oklahoma City died Oct. 16. He was born May 7, 1946, in Flushing, New York. He attended Ripon College in Wisconsin and received his J.D. from the OU College of Law. **Mr. Hermes served as a captain in the U.S. Army in Vietnam.** His legal career spanned over 40 years as an attorney at McAfee & Taft, with five years as a managing director. His practice focused on civil litigation and advocating for children of parents in disputes through his work with the Oklahoma Lawyers for Families and Children. Mr. Hermes was inducted into the American College of Trial Lawyers. He also served as a deacon, an elder and a Sunday school teacher at St. Stephen's Presbyterian Church. Memorial contributions may be made to Oklahoma Lawyers for Families and Children.

Christopher Darby Szlichta of Stillwater died Nov. 1. He was born Aug. 27, 1949, in Fort Dix, New Jersey. Mr. Szlichta graduated from Cascia Hall in Tulsa in 1968 and from OSU with a degree in political science in 1972. During college, he was active in student government, held a leadership role in the Phi Delta Theta fraternity and was the drummer in The Great Danes, a regionally famous boy band. He received his J.D. from the OCU School of Law in 1976 while interning at the Payne County District Attorney's Office. During his 45-year legal career, he served as the Payne County assistant district attorney, the Stillwater city attorney and a private practitioner focusing on family law. He was a member of the Stillwater Public Schools board, helped establish the Stillwater Public Education Foundation and served as the president of the Payne County Bar Association. Mr. Szlichta was also involved in OBA Law Day activities and the Oklahoma High School Mock Trial competitions. He also authored scholarly articles and lectured numerous times for the benefit and training of attorneys practicing family law.

2025 ISSUES

JANUARY

Law Practice Basics

Editor: Melissa DeLacerda
melissde@aol.com

FEBRUARY

Military & Veterans

Editor: Roy Tucker
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MARCH

Cannabis Law

Editor: Martha Rupp Carter
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APRIL

Alternative Dispute Resolution

Editor: Evan Taylor
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MAY

Constitutional Law

Editor: Melanie Wilson Rughani
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AUGUST

Labor & Employment

Editor: Sheila Southard
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SEPTEMBER

Torts

Editor: Magdalena Way
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OCTOBER

Immigration Law

Editor: Norma Cossio
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NOVEMBER

Trial by Jury

Editor: Roy Tucker
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DECEMBER

Ethics & Professional Responsibility

Editor: David Youngblood
david@youngbloodatoka.com

2026 ISSUES

JANUARY

Family Law

FEBRUARY

Criminal Law

MARCH

Business & Corporate Law

APRIL

Health Law

MAY

Insurance Law

AUGUST

Taxation

SEPTEMBER

Civil Procedure & Evidence

OCTOBER

Corporate Law

NOVEMBER

Appellate Practice

DECEMBER

Law Office Management

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

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Fellow - ACEFI FBI National Academy
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FULLY FURNISHED OFFICE SPACES, 1360 square feet, 201 S. Hominy Ave., Skiatook, OK. Email doctorrlj@att.net for information or call 918-633-1701. Will send pictures. Also check commercial listings for lease Skiatook.

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POSITIONS AVAILABLE

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

OKLAHOMA INDIGENT DEFENSE IS HIRING

The Oklahoma Indigent Defense System (OIDS) is seeking applicants for multiple positions within the agency. OIDS provides trial, appellate and post-conviction criminal defense services to persons who have been judicially determined to be entitled to legal counsel at State expense. OIDS employs attorneys and support staff in each of our 12 locations: Altus, Clinton, El Reno, Enid, Guymon, Lawton, Norman, Okmulgee, Poteau, Pryor, Sapulpa, and Woodward.

OIDS provides a comprehensive benefits package including:

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

To view our current openings and apply online, visit our employment page on our website at <https://oklahoma.gov/oids/employment.html>.

This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled. For questions concerning employment, please email jobs@oids.ok.gov.

POSITIONS AVAILABLE

DOWNTOWN OKC FIRM IS LOOKING FOR ASSOCIATE to handle litigation cases. Looking for self-motivated individual who desires courtroom work. Ideal candidate has entrepreneurial spirit with desire to bring in clients. Salary is \$67,500.00 a year, plus insurance. Firm has bonus structure for new business. Send replies to advertising@okbar.org with the subject line "Position OB."

THE DISTRICT ATTORNEY FOR PAYNE AND LOGAN COUNTIES is seeking an experienced attorney to prosecute criminal cases in the Stillwater office. Integrity, a moral compass, a strong work ethic, and a desire to make the community better required. Attorneys with experience in other areas of practice are invited and encouraged to apply. Salary plus full State of Oklahoma benefits. Please submit Cover Letter and Resume to: District Attorney's Office – Ninth District, 606 S. Husband, Room 111, Stillwater, OK 74074 or Scott.Staley@dac.state.ok.us.

DISTRICT 25 IS SEEKING AN ASSISTANT DISTRICT ATTORNEY in our Okmulgee County Office to perform a variety of professional duties, including prosecution of misdemeanors and felonies from intake through trial. Also, the successful applicant may be required to handle juvenile delinquent and mental health matters. In addition, applicant must possess the ability to effectively communicate and work with victims, witnesses, law enforcement, the courts, and other agencies. Salary range 65K-90K, based on experience. To apply, email carol.iski@dac.state.ok.us.

DISTRICT 27 HAS AN IMMEDIATE OPENING for a full-time Assistant District Attorney in our Sequoyah County, Sallisaw Office. This candidate will have a variety of professional duties; specifically, prosecution of criminal offenses, including misdemeanors and felonies. Salary range 55k-92k, based on experience. Full State of Oklahoma benefits, including paid annual and sick leave earned monthly. Paid holidays. Please send inquiries and resume to diana.baker@dac.state.ok.us.

POSITIONS AVAILABLE

OKLAHOMA INDIGENT DEFENSE SEEKING ATTORNEYS

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

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

Salary for this position starts at \$68,700; commensurate with qualifications and agency salary schedule.

OIDS provides a comprehensive benefits package including:

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

Applications must be submitted online. Visit <https://oklahoma.gov/oids/employment.html> to view job announcements and apply online. This is an open, continuous announcement; application reviews will be conducted periodically until all positions are filled. For questions concerning employment, please email Jobs@oids.ok.gov.

If you are a private attorney interested in conflict contract work with our non-capital trial division, please contact Brandon Pointer at Brandon.Pointer@oids.ok.gov or call the agency main phone line at 405-801-2601.

POSITIONS AVAILABLE

A LONG-ESTABLISHED AV-RATED OIL AND GAS LITIGATION LAWYER seeks a secretary that can work from home using the OLYMPUS dictation system. Lawyer sends work via audio transmission to secretary's home computer. When completed secretary sends completed work to lawyer via email. To apply, email rsallusti@coxinet.net.

OKC ESTABLISHED LAW FIRM SEEKING ASSOCIATE with 2-5 years experience preferred but not a requirement. Criminal law, family law and personal injury experience preferred. Salary position with incentive programs (D.O.E), insurance, matching 401k, vacation, paid CLE and sick leave. Send resume and salary requirements to Jim@OKDUI.com. All replies are confidential.



NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office of Associate District Judge, Custer County. This vacancy is created due to the appointment of the Honorable Donna Dirickson to District Judge on November 13, 2024.

To be appointed an Associate District Judge of Custer County, an individual must be a registered voter of Custer County 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, December 20, 2024. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before December 20, 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
Oklahoma City, OK 73105



NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill a vacancy for the position of Justice of the Supreme Court, Judicial District 4, which is comprised of Congressional District 3 as constituted on January 8, 2019. This vacancy is created by the retirement of the Honorable Yvonne Kauger, effective December 1, 2024.

To be appointed to the office of Justice of the Supreme Court, an individual must have been a qualified elector of the applicable Supreme Court Judicial District for one year immediately prior to his or her appointment. Additionally, the individual shall have attained the age of 30 years and have been a licensed attorney, practicing law within the State of Oklahoma, or serving as a judge of a court of record in Oklahoma, or both, for five years preceding his/her appointment.

Application forms can 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, December 20, 2024. Applications may be mailed, hand delivered or delivered by third party commercial carrier. If mailed or delivered by third party commercial carrier, they must be postmarked on or before December 20, 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
Oklahoma City, OK 73105

The Best Fee My Grandfather Ever Collected

By Mark S. Darrah

“AN HONEST MAN CAN’T make a living practicing law,” my grandmother said when I told her I had decided to go to law school. Her eyes had that glint they got when she spoke her truth and expected you to take it in and make it your own. “Your grandfather used to always say that being an attorney is the most dignified way in the world to starve to death.”

Her reaction surprised me. She had been married to a lawyer most of her adult life, and I would be the third generation in my family to practice law in Oklahoma. My grandparents never seemed to lack and lived with comforts many people didn’t share. Grandpa had been a county judge through the Great Depression and World War II and went into private practice after the troops came home. During the latter part of his career, he was a government lawyer representing restricted Choctaws and Chickasaws in probate and related cases.



Young Mark with his grandpa

When he was in private practice, my grandfather had a second-floor office in a downtown building in the town where he lived. The oldest law firm in the county was at the opposite end of the hall. My father said that when people came up the stairs, those with good-paying work would turn right. The others would turn left and go to my grandfather’s office.

Like many small-town lawyers in those days, Grandpa often worked for trade. A client would pay a fee with a sliver of mineral rights or a car engine overhaul. In the early 1950s, one client paid with a Deepfreeze Home Freezer, a then-revolutionary home appliance.

When my grandparents moved across the state, once Grandpa started working for the Bureau of Indian Affairs, the freezer was put into an outbuilding. Grandpa was a committed fisherman, and that freezer held a lot of crappie and bass.

I loved being with my grandfather when I was a little boy. He knew everyone. He had a story for every occasion. Going places with him was like being with a celebrity. Like most small-town lawyers, he devoted much of his free time to making his community better – to making the world a better place.

At the age of 64, Grandpa suffered a crippling stroke. His career ended. His voice was silenced. His Choctaw and Chickasaw clients



The dependable Deepfreeze

stopped by his home and would call him “My Probate. My Probate.”

After Grandpa died in 1976, that still-operating Deepfreeze became my mother’s, who used it and used it and used it. The freezer still worked in 2002 when my parents moved out of their home into senior living. This was over 50 years after it satisfied the payment of a fee and after at least 438,000 hours of continual use.

My grandmother’s words, I know now, were not a criticism of my career choice but an admonishment. A license to practice law is not a license to get rich, but if you are lucky, you might get a dependable Deepfreeze out of it.

Mr. Darrah is a general practice attorney in Tulsa. Donald B. Darrah, his grandfather, was Custer County judge from 1933 to 1947, in private practice in Clinton until 1958 and a U.S. trial attorney for the Department of the Interior until 1966. Oklahoma City lawyer Melissa J. Cottle is his great-granddaughter.

SEATING
LIMITED TO
50



OKLAHOMA CITY
THUNDER

VS DALLAS
MAVERICKS

THURSDAY, JANUARY 23

Doors Open: 4 p.m. - Dinner/CLE: 5 p.m. - Game: 7 p.m.

BASKETBALL AND CLE

Dinner Provided



MEMBERS MAY BRING NO MORE THAN ONE GUEST.
TO PAY FOR THE NON-MEMBERS TICKET, PLEASE CONTACT
RENEE AT 405.278.7029 OR BY EMAIL RENEEM@OKBAR.ORG
TO REGISTER GO TO: OK.WEBCREDENZA.COM



OBA CLE
Continuing Legal Education

A portrait of Clif Gooding, a middle-aged man with a beard and mustache, wearing a suit and tie, smiling slightly. The background is a light, neutral color.

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

– Clif Gooding, Oklahoma Bar Association Member

Get help addressing stress, depression, anxiety, substance abuse, relationships, burnout, health and other personal issues through counseling, monthly support groups and mentoring or peer support. Call 800-364-7886 for a free counselor referral.

If you are in crisis or need immediate assistance, call or text 988, Oklahoma's Mental Health Lifeline.



Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

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