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# THE OKLAHOMA BAR **Journal**

Volume 90 — No. 4 — April 2019

**LAW DAY ★ 2019**



**CELEBRATIONS ACROSS THE STATE ★ CONTEST WINNERS ★ ASK A LAWYER**

The Hard Rock Hotel and Casino has arranged a room rate of \$117 for those golfers wanting to stay closer to the course. Hopefully, this will make early check in on Thursday morning a little less painful. It is 7.6 miles from the Hard Rock to the Patriot. Call 1-800-760-6700 and mention "Oklahoma Bar Association - OKC" to receive the special group rate by May 29, 2019.

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MCLE CREDIT 2/2

# ETHICS IN 18 HOLES

JUNE 20, 2019

8 A.M. - 2:50 P.M. (8 A.M. CHECK-IN; 9 A.M. TEE TIME)

The Patriot Golf Club, 5790 N Patriot Drive, Owasso, OK 74055

FOR DETAILS AND TO REGISTER, GO TO [WWW.OKBAR.ORG/CLE](http://WWW.OKBAR.ORG/CLE)

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## PROGRAM PLANNER/MODERATOR:

Joe Balkenbush,  
OBA Ethics Counsel

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Your "classroom" is the great outdoors at The Patriot Golf Club. Eighteen ethics scenarios and a set of multiple-choice answers are your course materials. Discuss each scenario and possible answers as you play or ride to each hole. After you finish, head to the "19th Hole" for a buffet lunch and ethics discussion.

**SPACE IS LIMITED.** Register now to guarantee you or your team a place at this special CLE event! The event is set up for no mulligans, a max of bogey, and prizes will be given for 1st and 2nd place. Tie breaker is best score on the hardest handicapped holes. Flag prizes for closest to pin on hole #8 and #17 and longest drive on #11.

**TUITION:** \$235 before June 13, 2019  
\$260 after June 13, 2019  
NO WALK-INS

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# THE OKLAHOMA BAR Journal

# contents

April 2019 • Vol. 90 • No. 4

THEME: **LAW DAY**

Editor: Carol Manning

## FEATURES

- 6 SAY WHAT!? LAW DAY 2019  
*By KARA PRATT*
- 9 VOLUNTEERS NEEDED FOR ONE-DAY  
STATEWIDE HOTLINE
- 10 LAW DAY CONTEST WINNERS
- 24 COUNTY LAW DAY CHAIRPERSONS
- 25 LAW DAY HISTORY
- 26 COUNTY BAR ASSOCIATION ACTIVITIES
- 30 LAW DAY PROCLAMATION AND DIRECTIVE

## DEPARTMENTS

- 4 FROM THE PRESIDENT
- 58 FROM THE EXECUTIVE DIRECTOR
- 60 LAW PRACTICE TIPS
- 62 ETHICS & PROFESSIONAL RESPONSIBILITY
- 65 BOARD OF GOVERNORS ACTIONS
- 70 OKLAHOMA BAR FOUNDATION NEWS
- 73 YOUNG LAWYERS DIVISION
- 74 FOR YOUR INFORMATION
- 76 BENCH AND BAR BRIEFS
- 78 IN MEMORIAM
- 80 EDITORIAL CALENDAR
- 83 WHAT'S ONLINE
- 88 THE BACK PAGE

## PLUS

- 32 YOU MEAN THE GOVERNMENT CAN CONTROL  
MY GUNS?  
*By GALE ALLISON, REBECCA WOOD HUNTER AND  
VALE GONZALEZ*
- 38 ZERO CASH FLOW INVESTING: UTILIZING ZCF  
PROPERTIES TO SATISFY 1031 EXCHANGES AND  
EXTRACT VALUE  
*By JEFF TRACY*
- 44 MILESTONE BAR MEMBER ANNIVERSARIES
- 48 LEGISLATIVE REPORT: DAY AT THE CAPITOL  
SPEAKERS PROVIDE INSIGHTFUL INFORMATION  
*By ANGELA AILLES BAHM*
- 52 MOCK TRIAL: FICTIONAL CASE REQUIRES STUDENTS  
TO DEVELOP REAL-WORLD SKILLS  
*By KEVIN H. CUNNINGHAM*
- 56 JUDICIAL NOMINATING COMMISSION ELECTIONS:  
NOMINATION PERIOD OPENS



PAGE 44 – Milestone Member Anniversaries



PAGE 56 – JNC Elections

# The Law Day Tradition

By Charles W. Chesnut

**L**AST YEAR AS OBA PRESIDENT-ELECT, I was invited to Wewoka for Law Day. Frankly, I'd never been to Wewoka and didn't know what to expect. Wewoka is a town with a population of 3,430, located south of I-40 between Shawnee and McAlester and the county seat of Seminole County.

One of the benefits of being president of the OBA is that you have the opportunity to travel the highways and byways of our great state and see its geography. That's always a pleasant experience. When I'm in a town or city that is a county seat, I also stop and see the county courthouse. I do that throughout our state. It's an indulgence, but I always like to do it. I enjoyed my trip to Wewoka for Law Day for both of those reasons.

What's special about Law Day in Wewoka, Oklahoma? Why do more than a hundred of the townspeople from all walks of life – Supreme Court justices, Court of Criminal Appeals judges, Court of Civil Appeals judges, district judges, county officers and many attorneys within a 50-mile radius – show up?

They do it for two reasons. First, interestingly enough, is that the whole concept of Law Day, now celebrated nationally, was conceived by the late Hicks Epton, a Wewoka attorney and 1953 OBA president. Law Day actually started in Wewoka.



*Chuck*

President Chesnut practices in Miami.  
charleschesnutlaw@gmail.com  
918-542-1845

I find this whole matter fascinating. A lawyer in a small town in Oklahoma had an idea that has become a day of national celebration in the United States. Think of it. We often hear about the power of ideas. That's a pretty amazing demonstration of it.

The bar association in Seminole County carries on the tradition of Law Day by celebrating it annually. The whole county bar association gets behind it and supports it. The Law Day luncheon became an annual, must-attend event when the late Vic Kennemer, an attorney

from Wewoka and former member of our Board of Governors, made sure that everyone came. He called several months in advance and pleasantly requested (read "insisted") that you put it on your calendar and attend. He did that year after year.

That's the second reason people attend and makes this event compelling to me. It explains why Law Day in Wewoka continues to be special and why so many people show up for it every year.

It demonstrates what can be accomplished somewhere, anywhere, when a person invests oneself, one's time, energy and focus in an idea, a project or a mission that's worthwhile. One person can be the driver that accomplishes outstanding things in life. If we take time to stop and look, we see examples of that in our own lives all around us.

It could be you, and it could be me. All it takes is an idea combined with energy, focus and commitment. We can achieve something worthwhile in a big way in our corner of the world.

Our theme for Law Day in 2019 is "Free Speech, Free Press, Free Society." Take a few minutes and reflect on what your life would be like not to have those rights and privileges in our lives. Then take a few more minutes and be grateful because we do have them.

Finally, google "50 Awesome Quotes on the Power of Ideas." It's full of great thoughts from great minds about "ideas." All true. Some funny. Very thought provoking. I promise your time will be well spent.

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# Say What!?

## Law Day 2019

By Kara Pratt

**T**HIS YEAR'S LAW DAY THEME IS "FREE SPEECH, FREE PRESS, FREE SOCIETY." The theme focuses on these three fundamental rights and calls upon us to understand and fight to protect them. In the United States and abroad, free society is built through free speech and free press. These topics often become the center of conversation and the focus of litigation. It is hard to imagine a free society without these individual liberties, but historical and current debates surrounding them continually challenge us to consider their boundaries and resilience. Technology is ever changing and shaping and shifting how free speech and free press work in the everyday world.

One of the primary objectives of Law Day has always been education and reverence for the rule of law. As lawyers, we are necessarily educators. We educate our

clients, jurors and in some cases, opposing counsel. We do it all the time, and by training, excel at it. We should not leave our special talents at our office door.

Being celebrated in Oklahoma since the 1950s, Law Day is an excellent opportunity to share our talents with another generation. It is an opportunity to work with our favorite colleagues, old and new, to do something meaningful and to stir the same fire for the law that we have in our careers.

### ASK A LAWYER TV SHOW

This year's *Ask A Lawyer* program will air Thursday, May 2, at 7 p.m. on OETA, Oklahoma's public television station across the state. The topics cover landlord/tenant law, the Oklahoma Innocence Project and divorce. Veteran newscaster and attorney Dick Pryor will be this year's moderator and Angela Buckelew will serve as host. We expect this to be one of the best shows yet!

The landlord/tenant law segment will feature attorney Jennifer Montagna and two of her clients. One client faced a cold Christmas



*DeMarchoe Carpenter prepares to share his story as part of the Oklahoma Innocence Project segment.*



when her heat and oven went out and the landlord refused to fix the issues. Another client received notice of termination of a Section 8 voucher based on a false report that she had an unauthorized occupant.

The divorce segment will focus on two of my clients who will each discuss their different and unique divorce/child custody cases. One client had been in an abusive relationship while the other client had a spouse with mental health issues.



*OBA President Chuck Chesnut films his portion of the Ask A Lawyer TV show.*

The Oklahoma Innocence Project segment will focus on the exoneration of DeMarchoe Carpenter after he was convicted for the murder of Karen Summers in Tulsa in 1995, together with his friend Malcolm Scott. Vicki Behenna, executive director of the Oklahoma Innocence Project, will take viewers through the case and the importance of taking a second look.




OBA President Chuck Chesnut will share information about the free legal services offered by the OBA's Oklahoma Lawyers for America's Heroes Program. Oklahoma Supreme Court Chief Justice Noma Gurich will share her thoughts on this year's theme and will recognize the Law Day Contest winners.

#### CONTESTS AND ACTIVITIES

More than 1,050 students from across the state submitted entries focused on this year's theme, "Free Speech, Free Press, Free Society." The entries ranged from writing, coloring and art mediums. A ceremony was held at the Oklahoma Judicial Center on April 2 for first-place winners. Those earning second place or an honorable mention were honored in their home county with the help of their county bar association. See the names of all the winners and their winning entries online at [www.okbar.org/lawday](http://www.okbar.org/lawday) or in this issue.

#### FREE LEGAL ADVICE

For the 43rd year, we are organizing the Ask A Lawyer community service project, providing free answers to Oklahomans' legal questions. This year's project will be Thursday, May 2.

  
**ASK A LAWYER**  
2019  
**Thursday,  
May 2**  
**7-8 p.m. on OETA**  
  
Featuring Segments On:  
**Landlord/Tenant Law**  
**Divorce**  
**Oklahoma Innocence  
Project**  
  
Hosted by **Angela Buckelew**  
Moderated by **Dick Pryor**  
  
Special Guests:  
**Oklahoma Supreme Court  
Chief Justice Noma Gurich**  
and  
**OBA President Chuck Chesnut**  
  
 **OETA** 



Oklahoma City attorneys provide callers with free legal advice during the 2018 Ask A Lawyer event.

Oklahomans will have the option to email [askalawyer@okbar.org](mailto:askalawyer@okbar.org) with their question or call the toll-free hotline to speak with an attorney.

Participating in Ask A Lawyer is a great way for all Oklahoma lawyers to celebrate Law Day. This annual event gives us the opportunity to provide a much-needed community service while promoting a positive public image of lawyers and the OBA.

Oklahoma and Tulsa County lawyers will work together to staff the statewide toll-free hotline from 9 a.m. to 9 p.m. For other counties, the Law Day Committee works with each county's Law Day chairperson to establish a network of local county phone numbers in addition to the statewide number. Volunteer lawyers in each participating county staff phones at their local location for a predetermined time period and the numbers are advertised while the *Ask A Lawyer* TV program is airing.

Anywhere you live or work, your help is needed to make this community service project a success. It takes a total of 30 attorneys for



each two-hour shift to fully staff the statewide number. That effort, combined with the local county bars and those answering email questions, creates a huge need for lawyers to step forward.

To volunteer, contact your local county Law Day chairperson, listed in this issue or online at [www.okbar.org/lawday](http://www.okbar.org/lawday).

### DIRECTIVE AND PROCLAMATION

Chief Justice Noma Gurich is continuing the OBA Law Day tradition of issuing a Law Day Directive, encouraging courts to host Law Day events or to visit schools to speak on the role of the judiciary. Gov. Kevin Stitt has also signed a proclamation designating May 2 as Law Day in Oklahoma.

### GET INVOLVED

We urge you to participate by volunteering for the Ask A Lawyer program or by contacting your local county bar and participating in the many activities occurring throughout the state. We are always seeking interested lawyers to get involved in the Law Day Committee and will very soon be planning next year's activities. Please let me or Committee Vice Chair Ed Wunch know if you are available to lend your expertise. Contact us: Kara Pratt at [kpratt@barberbartz.com](mailto:kpratt@barberbartz.com); or Ed Wunch at [ed.wunch@laok.org](mailto:ed.wunch@laok.org).

### ABOUT THE AUTHOR

Kara Pratt is a partner at Barber & Bartz in Tulsa. She primarily practices family law. She currently serves on the OBA House of Delegates, as the Law Day Committee chair and is active in the Family Law Section. She is a 2011 graduate of Regent University School of Law.

# VOLUNTEER LAWYERS NEEDED!

Law Day 2019 | Thursday, May 2

## ASK A LAWYER

statewide free legal advice

Phone banks located at OETA studios in Oklahoma City and Tulsa, or local lawyers' offices in nonmetro counties.

Volunteers may also answer questions by email.

Oklahoma City:

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[www.okcbar.org/events](http://www.okcbar.org/events)

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Other counties:

Contact your Law Day chairperson for details.

See the list of chairs at

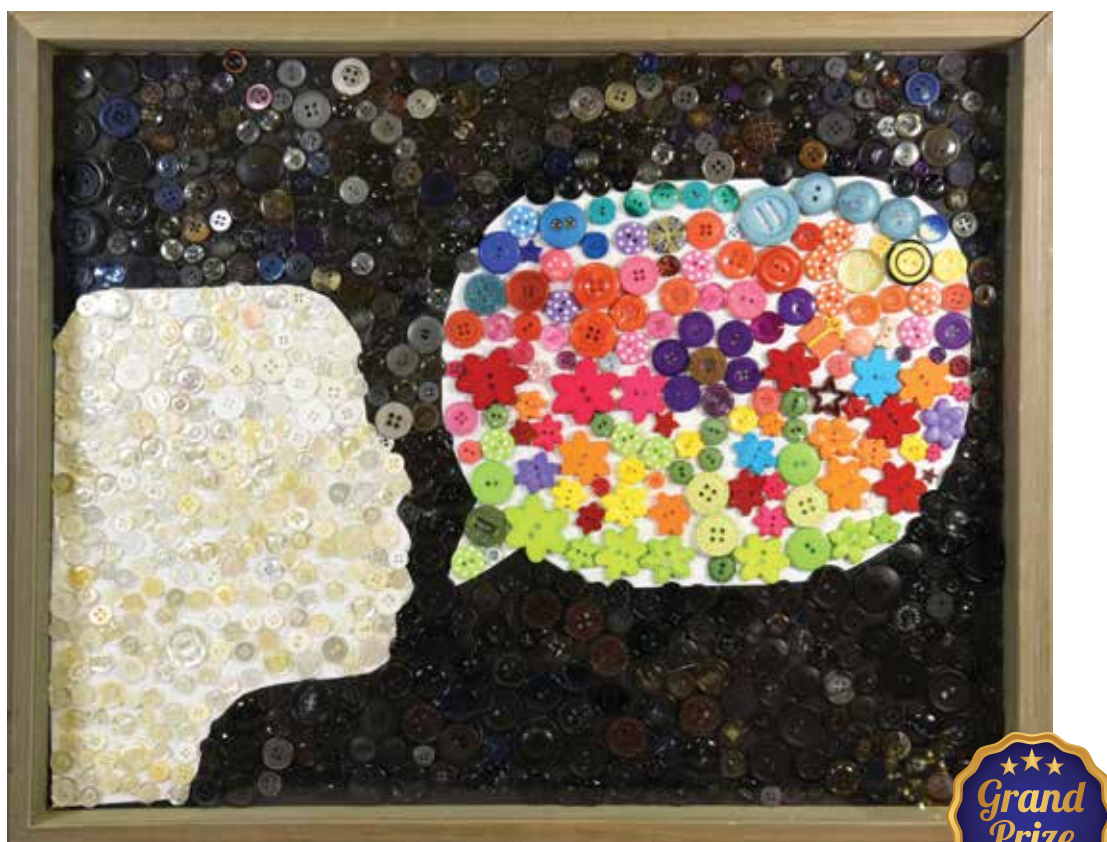
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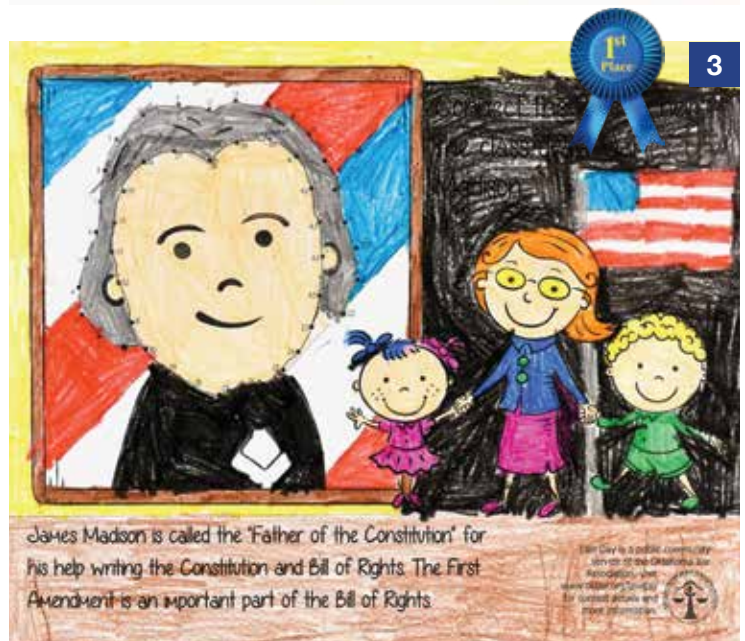
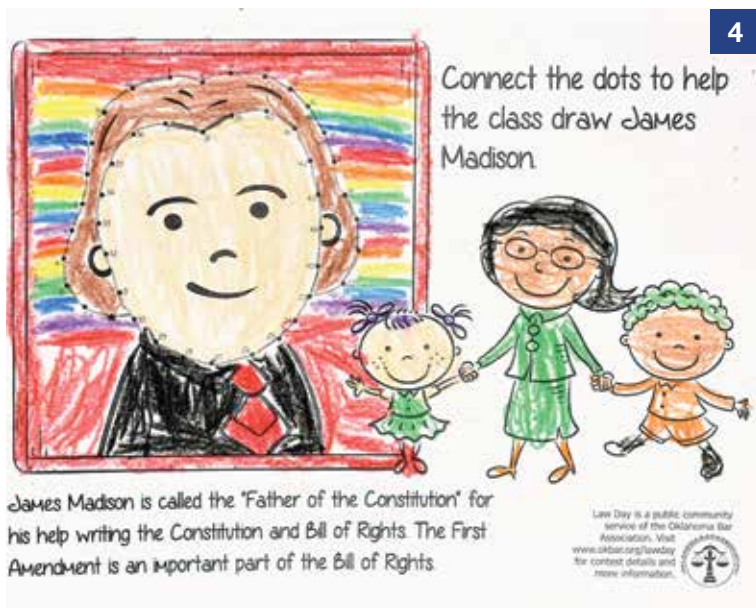
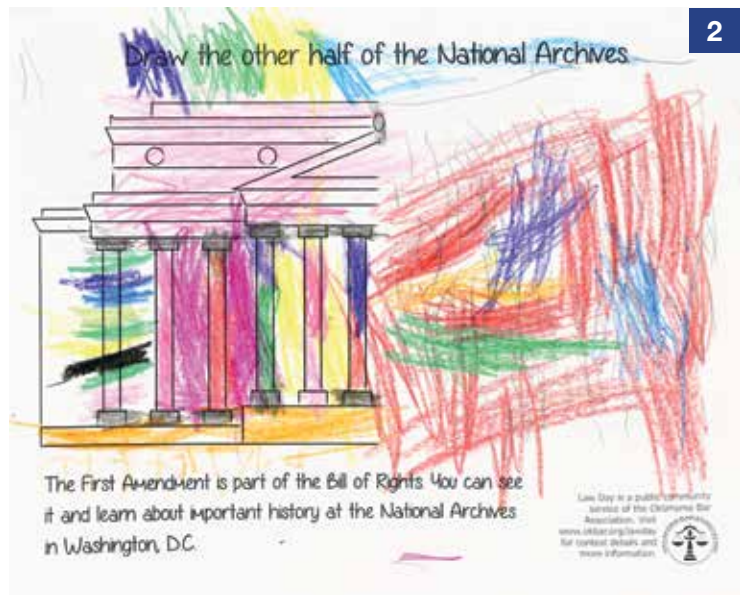
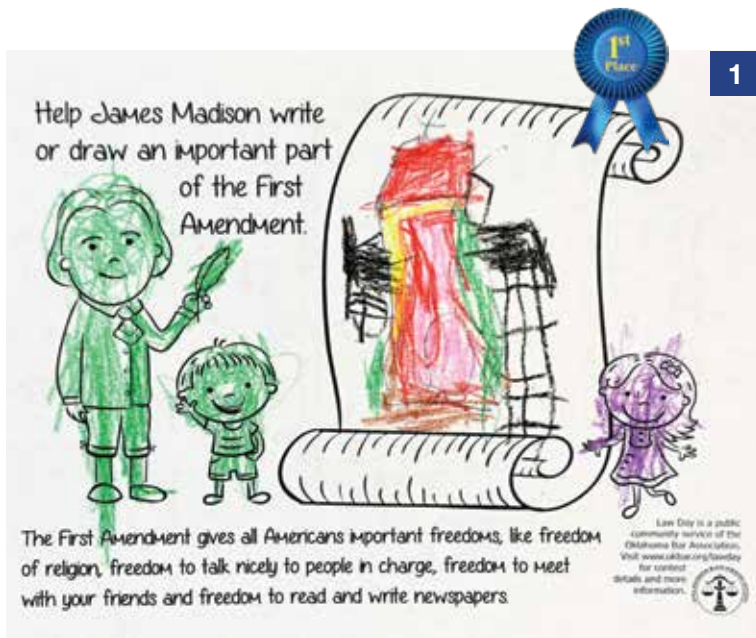
# Contest Winners From Across the State

**T**HE OBA LAW DAY COMMITTEE would like to thank Oklahoma educators, students and their families for participating in the 2019 Law Day Contest. This year, nearly 1,100 students from across the state entered the contest.

First- through 12th-grade students demonstrated their knowledge of the history and concepts of the theme through essays and multimedia art. Pre-K and kindergarten students were given a choice of coloring activity pages related to the theme, allowing them to show off their budding creative and writing abilities. For both elementary and secondary students, the contest gave them an opportunity to explore how the First Amendment helps guarantee and protect all Americans' rights.



**Elizabeth Kwok**  
Grand Prize  
Third Grade Art  
*Nichols Hills Elementary School,  
Oklahoma City*



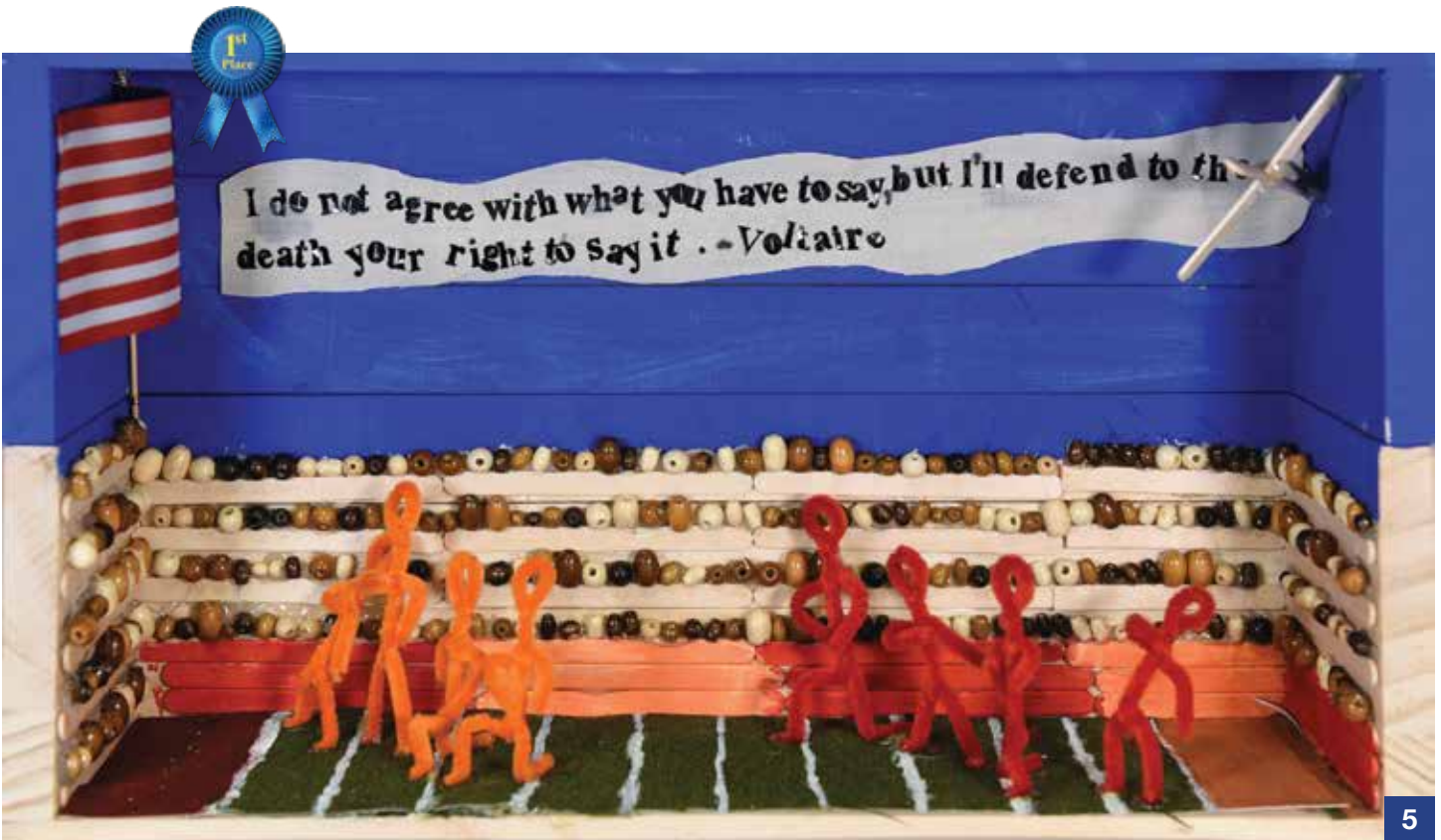
**1. Jose Garcia**  
First Place  
Pre-K Coloring  
Temple Elementary School,  
Temple

**2. Audrey Ellis**  
Second Place  
Pre-K Coloring  
Covenant Community School,  
Stillwater



**3. Brooklyn Miller**  
First Place  
Kindergarten Coloring  
Seiling Elementary School,  
Seiling

**4. Alyssa Crawford**  
Second Place  
Kindergarten Coloring  
Salina Elementary School,  
Salina



5



6



7

See the full entry at [www.okbar.org/lawday](http://www.okbar.org/lawday).

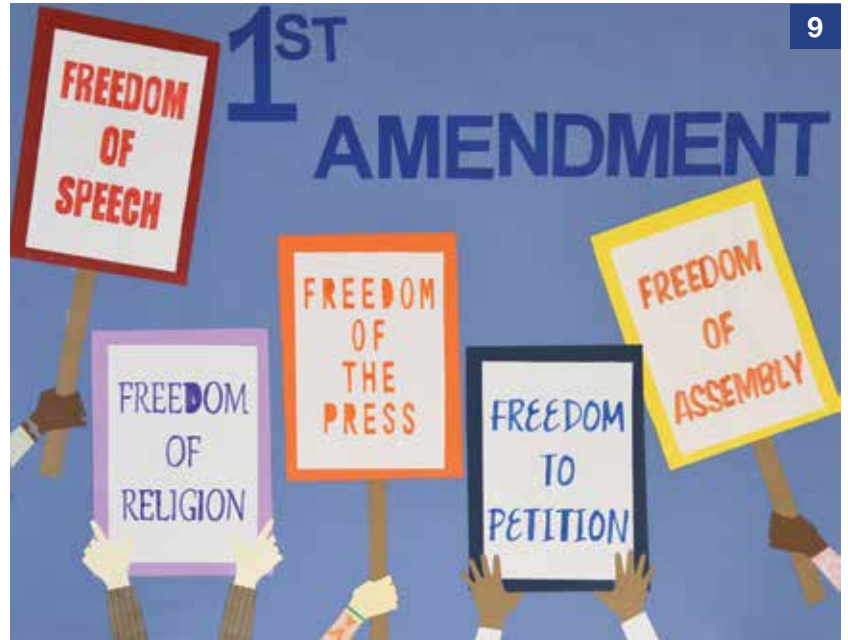
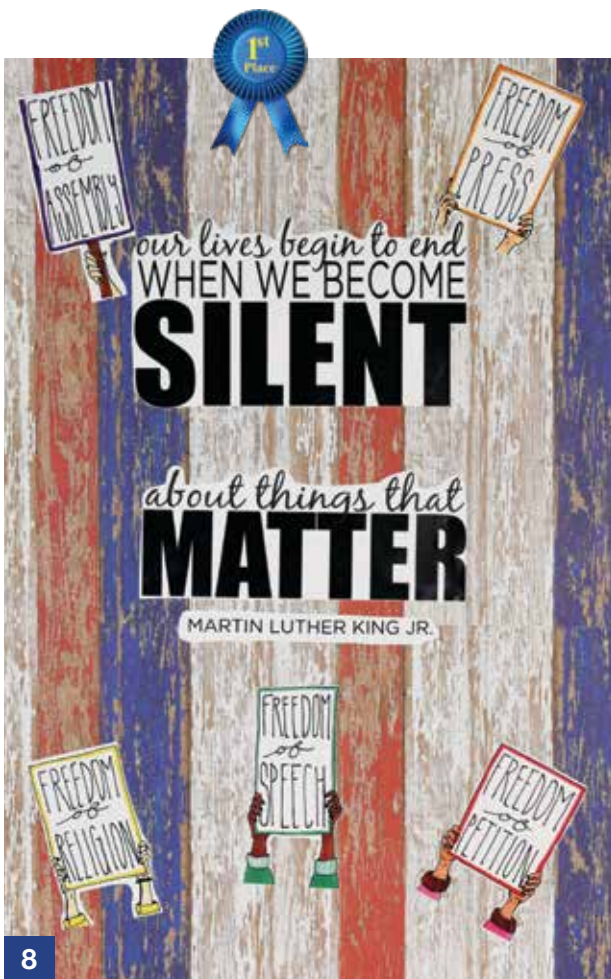


**5. Brody Gilliam**  
 First Place  
 First Grade Art  
 Covenant Community School,  
 Stillwater

**6. Josie Douglas**  
 Second Place  
 First Grade Art  
 Sequoyah Elementary School,  
 Shawnee



**7. Amelia Kwok**  
 First Place  
 First Grade Writing  
 Nichols Hills Elementary School,  
 Oklahoma City



Free speech is important because you can say something without getting scared. With free speech, you can say, "I don't like you" or "I don't agree with you". Free speech lets us vote for who ever we want. If people can have free speech, they can pray who ever God they want. Free speech lets us write our thoughts in book, Tv, and newspapers.

11

See the full entry at [www.okbar.org/lawday](http://www.okbar.org/lawday).

## WHY THE FIRST AMENDMENT IS IMPORTANT

10

Before the pilgrims came to America, they did not have the freedom to say what they wanted. If they said something bad about the king they could be thrown in jail. Then America won the Revolutionary War. When they were setting up our new government, they made sure that we had lots of freedoms, including the right to say what we believe, even if it isn't the same as our government. This freedom was included in the Bill of Rights, and I am glad I can say what I believe without being afraid of being thrown in jail. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**8. Emmet Wilson**  
First Place  
Second Grade Art  
Covenant Community School,  
Stillwater

**9. Sophie Buchanan**  
Second Place  
Second Grade Art  
Clara Reynolds Elementary School,  
Harrah



**10. Elijah McDaniel**  
First Place  
Second Grade Writing  
Covenant Community School,  
Stillwater

**11. Nia Murimi**  
Second Place  
Second Grade Writing  
South Rock Creek School,  
Shawnee



12

I think Freedom of Religion is the best. Because you can go to any church. And you aren't forced to go to a church. I also like that we don't get trown in jail or even death if we believe in christ or dont believe in christ. So thats why I like Freedom of Religion.

15



### FREEDOM OF PETITION

The freedom of petition means you can tell the government what you think is right or wrong. This is important because people should be able to say what they feel about the laws and government without being afraid of going to jail. Our freedom to petition is also important because our leaders know that the American people are free to tell them what we think of the job they are doing. This means our leaders won't do anything too crazy because they know we can tell them they are crazy. Freedom of petition is important in keeping our laws balanced with what the people want and what the government wants. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

14



13



**12. Dustin Hitchcock**  
First Place  
Third Grade Art  
Covenant Community School,  
Stillwater

**13. Trevor Boone**  
Second Place  
Third Grade Art  
Covenant Community School,  
Stillwater



**14. Emma Kuehl**  
First Place  
Third Grade Writing  
Covenant Community School,  
Stillwater

**15. Daisy Reid**  
Second Place  
Third Grade Writing  
Skiatook Elementary School,  
Skiatook





17

Out of the first ten amendments (The Bill of Rights) the fourth one speaks to me the most, because I want to become a lawyer when I grow up. The protection from unreasonable searches and seizures is what helps make the justice system work. This amendment requires police officers and other law enforcement officials to have a search warrant, or unreasonable doubt, to search and seize a U.S. citizen's house or place of work and the person themselves. Without this amendment the entire justice system falls to pieces.

19

See the full entry at [www.okbar.org/lawday](http://www.okbar.org/lawday).



### THE DANGER OF A SILENT WORLD

Imagine our world if freedom of speech did not exist. Scientific discoveries may not be allowed to be published, knowledge may be withheld ... In the 1600s Galileo discovered that the earth moved around the sun. The Catholic church believed that the sun moved around the earth and tried to keep Galileo silent. If they had succeeded our science would be skewed and scientific discoveries would have been slowed. It is important for us to have good knowledge even if it disagrees with tradition, religion, or previous scientific thoughts. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

18



16



**16. Paetyn Gilliam**  
First Place  
Fourth Grade Art  
Covenant Community School,  
Stillwater



**17. Avery Perkins**  
Second Place  
Fourth Grade Art  
Lakeview Elementary School,  
Yukon



**18. Paetyn Gilliam**  
First Place  
Fourth Grade Writing  
Covenant Community School,  
Stillwater



**19. Olivia Evans**  
Second Place  
Fourth Grade Writing  
Independence Elementary School,  
Yukon



## BILL OF RIGHTS

22

The first ten amendments added to the Constitution are known as the Bill of Rights. The Bill of Rights was known to be the added freedom and so everyone always followed these rules of freedom, justice, and independence. I believe that we will always be united with our freedom, injustice, and liberty, and if nothing goes right we can always try our hardest to make it better than ever. I believe that the Bill of Rights was made for independence, justice for all, and liberty so nobody would be slaves and the government had no power over us. *Read the full essay at [www.okbar.org/lawvday](http://www.okbar.org/lawvday).*



21



**20. Braden Hibler**  
First Place  
Fifth Grade Art  
Grove Elementary School,  
Shawnee



**22. Ian Fiddler**  
First Place  
Fifth Grade Writing  
Nichols Upper Elementary  
School,  
Miami

**23. Matthew Storey**  
Second Place  
Fifth Grade Writing  
Nichols Upper  
Elementary School,  
Miami



20

## BILL OF RIGHTS

The first ten amendments to the Constitution make up the Bill of Rights. James Madison wrote the amendments. Many delegates of the states were against signing the Constitution without a Bill of Rights included. It became a major issue in ratifying the Constitution in some states. As a result, James Madison wrote 12 amendments and presented them to the First Congress in 1789. On December 15, 1791 ten of the amendments were passed and made part of the Constitution. They would later become known as the Bill of Rights.

23



## THE FIRST AMENDMENT: FREEDOM WORTH PRESERVING

It was late September in 1789.

Representatives from each of the thirteen colonies were discussing an important strand of America's foundation: The Bill of Rights. Since America had earned her liberty from England, there were many new rights to protect. Her citizens deserved the freedoms of religion, speech and press, and the right to petition for change. Thus, the First Amendment was created. *Read the entire essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

26



25

## ENGLAND'S INFLUENCE

27

We saw these things that were wrong, so we fought for freedom, and when we gained freedom we made laws to stop the injustice ... Already you can see how England has affected our laws. If we hadn't seen the injustice then we could still be part of England, or we could have forgotten to make laws about these things and be the same as England. We saw and experienced the injustice of England and we broke away to make a fair country that injustice has helped shape who we are. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

24



**24. Lani Kauahquo**  
First Place  
Sixth Grade Art  
Hobart Middle School,  
Hobart

**25. Aly Judkins**  
Second Place  
Sixth Grade Art  
Hobart Middle School,  
Hobart



**26. Julia Chen**  
First Place  
Sixth Grade Writing  
Fisher Elementary School,  
Oklahoma City

**27. George Leydorf**  
Second Place  
Sixth Grade Writing  
The Academy of Classical  
Christian Studies,  
Oklahoma City



## IRAQ'S BILL OF RIGHTS

In Iraq the Bill of Rights significantly states in Article 13, which guarantees the keystone freedom of religion: Each Iraqi has the right to freedom of thought, conscience, and religious belief and practice ... The Bill of Rights also protects freedom of expression, association, assembly, movement, privacy, women's rights, and rights to own property, fair trial and basic due process, including freedom from torture. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

30

## BILL OF RIGHTS – COMPARING U.S. AND JAPAN

The individual rights listed in Japan's constitution go further than the U.S. Bill of Rights, including many of the Amendments that were made to the U.S. Constitution after the original Bill of Rights had been ratified. Some of these include universal suffrage in Article 15 and the prohibition of slavery in Article 8. Other rights listed in the Japanese constitution are not in the U.S. Bill of Rights at all. These include the right to live where you want and work at whatever occupation you want, the right to academic freedom ... and free public education. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

31



29



**28. Hannah Joslin**  
First Place  
Seventh Grade Art  
Hobart,  
Hobart

**29. McKenzie Findley**  
Second Place  
Seventh Grade Art  
Covenant Community School,  
Stillwater



**30. Syreena Tallant**  
First Place  
Seventh Grade Writing  
Middleberg Public School,  
Blanchard

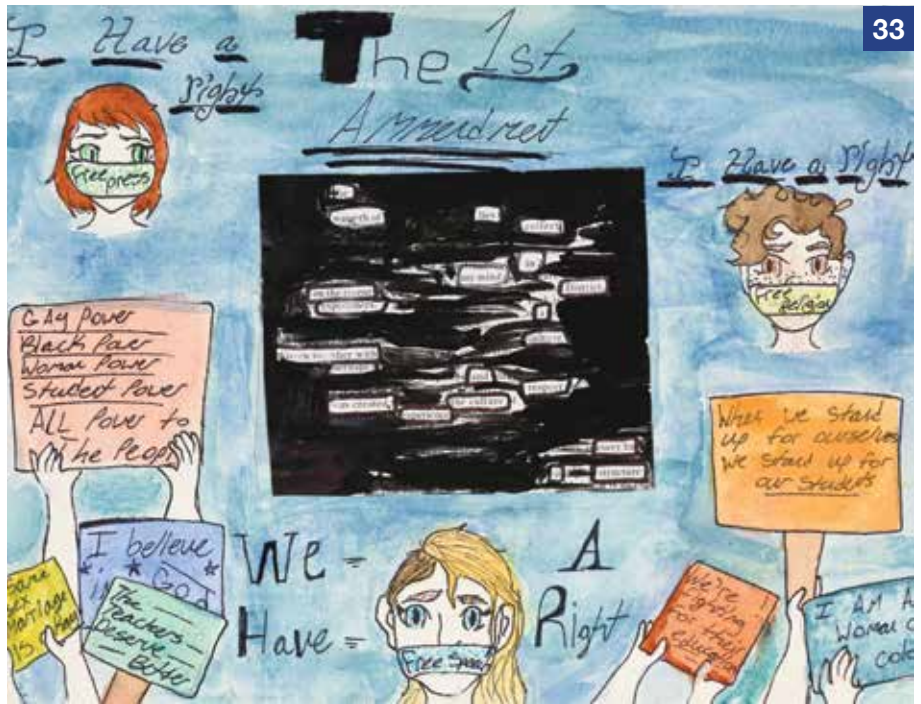
**31. Davis Lynn**  
Second Place  
Seventh Grade Writing  
The Academy of Classical  
Christian Studies,  
Oklahoma City



## 1ST AMENDMENT RIGHTS

34

The fourth piece is the right to assemble peacefully. A crucial emphasis to make is that it is peaceful, so violent forms of rioting don't count. This is a very underrated part, but it allows people to commune, discuss ideas, and publicly air opinions; the right to free speech is nothing without one being able to share their ideas with others. It also allows that, when a corrupt company or the Government does something controversial, we can all come out and protest without being arrested. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



33



32



35

## IMPORTANCE OF THE FIRST AMENDMENT

After the Revolutionary War ended, America's first Constitution was established. The Articles of Confederation ensured strong state power to avoid tyrannical rule in the American colonies, but it did not last. The American colonies needed a stronger government that was run by "the people". This led to the establishment of the U.S. Constitution, which became ratified with the addition of the Bill of Rights. The most important of these amendments is the first amendment. The five rights included in the first amendment are included, to protect "the people's" unalienable rights. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**32. Davis Raschen**  
First Place  
Eighth Grade Art  
Monte Cassino School,  
Tulsa



**33. Rowen Pace**  
Second Place  
Eighth Grade Art  
Central Junior High School,  
Moore

**34. Jackson Clark**  
First Place  
Eighth Grade Writing  
The Academy of Classical  
Christian Studies,  
Oklahoma City

**35. Rayan Sawan**  
Second Place  
Eighth Grade Writing  
Oakdale,  
Edmond



36



37



### THE FIRST AMENDMENT – LOUDER THAN THE HATEFUL

38

If a change were made to the First Amendment that prohibited such extreme speech and protests, this would prohibit all extreme speech and protests. The Westboro Baptist Church and Neo-Nazis would be stopped, but so would any other form of speech. Eventually, the prohibition of this would come back to cripple the people who originally pushed for the change. The Supreme Court doesn't want to support hate groups, but rather they want to support the basic freedoms of all citizens. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

39

### IT'S A FREE COUNTRY

My mom has always told me “If you don't have anything nice to say, don't say anything at all.” I've recently learned that although this rule is polite, it contradicts the rights granted to me under the first amendment, which are arguably more important than having good manners. Moms don't benefit from teaching their kids about the right to free speech. I've been grounded enough to know I haven't earned that right just yet. The Founding Fathers, however, foresaw the need for certain protections. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**36. Thomas Buchanan**  
First Place  
Ninth Grade Art  
Harrah High School,  
Harrah

**37. Janessa Chastain**  
Second Place  
Ninth Grade Art  
Stilwell High School,  
Stilwell



**38. Cole Steeley**  
First Place  
Ninth Grade Writing  
Mingo Valley Christian School,  
Tulsa

**39. Noah Hollifield**  
Second Place  
Ninth Grade Writing  
Lawton High School,  
Lawton  
Oklahoma City



## HOW JAILS ARE OVERLOOKING PRISONERS' FIRST AMENDMENT RIGHTS

You may still be wondering how refusing someone an animal-friendly meal is a violation of the first amendment. Jailhouse.org states that most judges can agree that, "your beliefs don't have to be associated with a traditional or even an established religion to be 'religious.'" The reasoning behind this is saying that while your vegetarianism/veganism may not be typical of your religion – whether that be the 227.9 million Christians, 2.23 million Hindus or 3.45 million Muslims in the US – they are beliefs nonetheless. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

42



40



## WE WILL NOT BE SILENCED

43

We will not be silenced  
You will not take our voice  
As Americans,  
It is our only weapon  
That does not kill  
We will not be silenced\*  
You will not steal our voices  
Our very first law of laws  
States just that  
We will not be silenced\*\*  
*Read the full poem at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



41



**40. Aubrey Topping**  
First Place  
Tenth Grade Art  
Marlow High School,  
Marlow

**41. Cameron Bryan**  
Second Place  
Tenth Grade Art  
The Academy of Classical  
Christian Studies,  
Oklahoma City



**42. Palmer Strubhar**  
First Place  
Tenth Grade Writing  
Piedmont High School,  
Piedmont

**43. Lexis Nolen**  
Second Place  
Tenth Grade Writing  
Kiefer High School,  
Kiefer



44



### THE IMPORTANCE OF PROTEST

47

All of our civil liberties have been put to good use over the decades since the Constitution was first created. These freedoms have been challenged and people have died to protect these rights. The freedoms we are given should not be taken for granted. The civil rights movement, starting with Rosa Parks refusing to give up her seat on the bus to a white male, began on December 1, 1955. It would later be known as the most peaceful protest to happen in America. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

45



### THE FIRST AMENDMENT: WHO IT PROTECTS AND WHY IT'S REINTERPRETATION IS PROBLEMATIC

46

For instance, does freedom of religion protect individuals, religious groups, or nonreligious people, and why is it important that people can freely worship? For that matter, does this part of the Constitution prohibit the government from ever interacting with religion? The freedoms of religion, press, assembly, petition, and speech established by the First Amendment protect different people, and although these freedoms are vital to the American law system, their reinterpretation throughout the years has resulted in some interesting constitutional dilemmas. *Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**44. Jesse Anderson**  
First Place  
Eleventh Grade Art  
Owasso High School,  
Owasso



**45. Katie Williams**  
Second Place  
Eleventh Grade Art  
Pocola High School,  
Pocola

**46. Katie McQuay**  
First Place  
Eleventh Grade Writing  
Skiatook

**47. Zoey Russell**  
Second Place  
Eleventh Grade Writing  
Pawnee High School,  
Pawnee



## FIGHT FOR FREEDOM OF SPEECH

Can we say  
What we really want to say?  
I think about this all of the time,  
Every single day  
Is our protesting all  
Of what it's even worth  
Should we venture with these words  
Or should we just disperse  
The ones with the power  
Are just so one sided  
*Read the full poem at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

49

## TINKER V. DES MOINES

Brother-sister from Iowa  
Fed up with wars of America  
Wearing black bands on their arm  
To protest the war in Vietnam  
That day the school ruled that they'll allow it  
But only from their now solemn home.  
Why can't they benignly and silently,  
Speak against a war without hope?  
*Song lyrics excerpt – hear the song and read all lyrics at [www.okbar.org/lawday](http://www.okbar.org/lawday).*

51



48



## A GAME-CHANGER DURING THE CIVIL RIGHTS MOVEMENT

50

The right to assemble is often overlooked, but was an influential part of the civil rights movement in the 1950s and 1960s. The civil rights movement was over a two-decade period where African Americans spoke out against their unequal treatment in the economic, political, and social spectrum. The right to peaceably assemble was the foundational tool used by African Americans during their fight for equality. This right raised public awareness, empowered influential leaders of the time, and led to the creation of landmark Supreme Court cases.  
*Read the full essay at [www.okbar.org/lawday](http://www.okbar.org/lawday).*



**48. Carmela Dela Isla**  
First Place  
Twelfth Grade Art  
Broken Arrow High School,  
Broken Arrow

**49. Grant Mayberry**  
Second Place  
Twelfth Grade Art  
Mingo Valley Christian School,  
Tulsa



**50. Cassidy Beck**  
First Place  
Twelfth Grade Writing  
Pawnee High School,  
Pawnee

**51. Gilbert Johnston**  
Second Place  
Twelfth Grade Writing  
Kiefer High School,  
Kiefer

# County Law Day Chairpersons

**Beaver**

Todd Trippet  
580-625-4597

**Canadian**

Jana Knott  
405-262-4040

**Choctaw**

John Frank Wolf III  
580-326-6427

**Cimarron**

Ronald L. Kincannon  
580-544-3209

**Cleveland**

Julia Mills Mettry  
405-701-8856

**Comanche**

Christine Galbraith  
580-585-4444

**Creek**

Carla Stinnett  
918-227-1177

**Garfield**

Benjamin Barker  
580-234-5144

**Haskell**

Stone B. Sanders  
918-967-9008

**Jackson**

Cole McMahan  
580-482-5551

**Kay**

John R. Andrew  
580-767-0451

**Kiowa**

Tom Talley  
580-726-2251

**Latimer**

F. Nils Raunikar  
918-465-1000

**LeFlore**

Amanda Grant  
918-962-2436

**Lincoln**

Sarah L.  
Soderstrom-Bridge  
405-258-1334

**Logan**

Rebecca King  
405-282-4000

**Marshall**

Jeff Landgraf  
580-795-3397

**Mayes**

Chase McBride  
888-848-4558

**McClain**

Haley Dennis  
405-527-7575

**McCurtain**

Emily Herron  
580-286-7611

**McIntosh**

Caleb Harlin  
918-689-9281

**Murray**

Mark Melton  
580-369-2376

**Muskogee**

Matthew R. Price  
918-683-0309

**Noble**

Shane Leach  
580-336-2039

**Okfuskee**

Don McFarland  
918-623-2717

**Oklahoma**

Kellie Howell  
405-455-1032

**Ottawa**

Jennifer Ellis McAffrey  
918-919-9290

**Payne**

Amanda Lilley  
405-624-1734

**Pittsburg**

Judge James Bland  
918-424-6651

**Pottawatomie**

Michelle Freeman  
405-273-6087

**Pushmataha**

Charlie Rowland  
580-298-2525

**Roger Mills**

Judge F. Pat VerSteeg  
580-497-3356

**Rogers**

Tim Wantland  
918-341-5973

**Seminole**

Judge Tim Olsen  
405-257-2545  
and  
Gordon Melson  
405-320-0161  
and  
Judge Brett Butner  
405-257-3386

**Sequoyah**

Kent S. Ghahremani  
918-775-5900

**Stephens**

Carl J. Buckholts  
580-252-3240

**Texas**

Evan Humphreys  
580-338-3868

**Tulsa**

Rebekah L. Guthrie-Frisby  
818-949-3565

**Wagoner**

Richard Loy Gray Jr.  
918-485-2889

**Washington**

James M. Elias  
918-336-4132

**Washita**

Shane Regier  
580-832-3818

**Woodward**

Kyle Domnick  
580-256-5517

# Law Day History

**LAW DAY WAS CONCEIVED BY THE LATE HICKS EPTON**, a Wewoka attorney who served as Oklahoma Bar Association president in 1953. Before he became president, Mr. Epton served as head of the public relations committee, and in 1951, he launched one of the most important public relations programs ever undertaken by the OBA: Know Your Liberties – Know Your Courts Week. This was one of the last weeks of April dedicated to educating the public about the legal system and celebrating the liberties we have as Americans.



The Know Your Liberties – Know Your Courts Week spread across the nation and earned for the association two Freedom Foundation awards.

In preparation for the second annual Know Your Liberties – Know Your Courts Week, OBA President John Halley encouraged all lawyers to participate.

“Every American should know more about his liberties under the law and more about the American court system,” Halley said. “The more they know about them, the more they will appreciate the American way of life. It is the responsibility of the lawyer to see that the

citizens of this country are given the opportunity to be informed. The goal is worth the effort and if the system fails or the liberties are lost, the responsibility will rest heavily on the legal profession.”

In 1958, President Dwight D. Eisenhower established Law Day nationally by presidential proclamation. On this occasion, he said, “It is fitting that the American people should remember with pride and vigilantly guard the great heritage of liberty, justice and quality under law. It is our moral and civil obligation as free men and as Americans to preserve and strengthen that great heritage.”

The OBA continued its celebration of Know Your Liberties – Know Your Courts Week, but after much hesitation, the decision was made to give up the name in 1960. The change was made only to take advantage of the extensive national publicity given to Law Day through the efforts of the American Bar Association.

The first of May was set aside in 1961 by a Joint Resolution of Congress as a “special day of celebration by the American people in appreciation of their liberties and the reaffirmation of their loyalty to the United States of America” and as an occasion for “rededication to the ideals of equality and justice under laws.”

Since the first observance, the American Bar Association, the national voluntary organization of the legal profession, has acted as the national sponsor of Law Day. State, county and local bar associations organize individual projects throughout the country. Many national organizations also recognize Law Day, including the National Education Association, National Governors’ Association, United States Conference of Mayors, Boy Scouts and Girl Scouts of America and civic and services clubs such as Rotary International and Kiwanis International.



**Hicks Epton** was born in Arkansas and earned his law degree at OU in 1932. He moved to Wewoka where he practiced law for 40 years. He served four years as chairman of the board of Admissions of the Oklahoma Bar, was president of the Oklahoma Bar Association in 1953 and of the Oklahoma Bar Foundation from 1953 through 1958.

# County Bar Association Activities

## BEAVER COUNTY BAR ASSOCIATION

The Beaver County Bar Association will participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## CANADIAN COUNTY BAR ASSOCIATION

The Canadian County Bar Association will host a panel discussion for local high school seniors at the Canadian County Courthouse on May 2 from 8 a.m. to 10 a.m. The panel discussion will also include a speech by Oklahoma Supreme Court Vice Chief Justice Patrick Wyrick. The topic of the speech and panel is "Free Speech, Free Press, Free Society."

The CCBA will also participate in the Ask A Lawyer program from 3-6 p.m. in conjunction with the statewide effort to provide free legal advice.

## CHOCTAW COUNTY BAR ASSOCIATION

On May 4, the Tri-County Bar Association, comprised of Choctaw, McCurtain and Pushmataha counties, will host a Law Day Banquet at the Idabel Country Club. Judge Deborah Barnes with the Oklahoma Court of Civil Appeals will be the guest speaker. The dinner will begin at 6 p.m. with a social hour and the cost is \$25 per person. Please RSVP to Emily Herron at 580-286-7611.

The Choctaw County Bar Association will also participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## CLEVELAND COUNTY BAR ASSOCIATION

The Cleveland County Bar Association will celebrate Law Day by selling Law Day T-shirts, holding a Law Day luncheon at noon on May 1 and participating in the Ask A Lawyer program from 6:30-9 p.m. in conjunction with the statewide effort to provide free legal advice.

## COMANCHE COUNTY BAR ASSOCIATION

To celebrate Law Day, the Comanche County Bar Association will host a scholarship application process for local high school seniors. A committee of attorneys, paralegals and administrative assistants will review the applications and select winners to receive scholarship awards toward higher education.

The Comanche County Bar Association will also host its annual Law Day Luncheon on Thursday, May 2, at 11:30 a.m. in the Great Plains Coliseum Annex Building in Lawton. The Law Day Luncheon is an event for those in the legal profession, including judges, attorneys, paralegals, court clerks, bailiffs, law enforcement and administrative

assistants. Awards will be given to members of the legal profession, scholarships will be presented to local high school students and a speaker will share words of encouragement. For more information, please contact Christine Galbraith at 580-585-4444.

Each year members of the local bar and legal community participate in an annual golf tournament. If you are interested in participating in the CCBA Law Day Golf Tournament or if you have questions, please contact Golf Tournament Chair Monty Hightower at 580-355-8920.

Local attorneys will visit area high schools to speak to students. The attorneys will discuss law as a career, legal rights and responsibilities once the students turn 18.

The CCBA will also participate in the Ask A Lawyer program from 6-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## GARFIELD COUNTY BAR ASSOCIATION

The Garfield County Bar Association will celebrate Law Day by participating in the Ask A Lawyer program from 6-8 p.m. in conjunction with the statewide effort to provide free legal advice. GCBA members will also speak at area schools May 2-3 on the importance of free speech, free press and free society.

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## **JACKSON COUNTY BAR ASSOCIATION**

The Jackson County Bar Association will hold the Ask A Lawyer program from 5:30-7:30 p.m. on May 9.

## **KAY COUNTY BAR ASSOCIATION**

To celebrate Law Day, members of the KCBA will present local students with their Law Day Art and Writing Contest awards. The KCBA will also participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## **LATIMER COUNTY BAR ASSOCIATION**

The Latimer County Bar Association will join the Pittsburg County Bar Association for a Law Day dinner at Pete's Place in Krebs on May 2. Oklahoma Innocence Project Executive Director Vicki Behanna will be the guest speaker.

On May 1, the LCBA will also join PCBA in holding its Ask A Lawyer event from 6-8 p.m.

## **LINCOLN COUNTY BAR ASSOCIATION**

In celebration of Law Day, the Lincoln County Bar Association will host local 4<sup>th</sup>-grade students who will participate in a mock trial at the Lincoln County Courthouse. In addition, members will attend the annual Law Day Picnic Friday, May 3, at the Chandler Baseball Camp.

## **LOGAN COUNTY BAR ASSOCIATION**

The Logan County Bar Association will participate in the Ask A Lawyer program from 4-7 p.m. in conjunction with the statewide effort to provide free legal advice.

## **MAYES COUNTY BAR ASSOCIATION**

The Mayes County Bar Association will participate in the Ask A Lawyer program from 5-6:30 p.m. in conjunction with the statewide effort to provide free legal advice.

Bar association members will also present a Salina Elementary School student with her Law Day Art and Writing Contest award and give a short speech to the school regarding Law Day, free speech, free press and free society.

## **MCCLAIN COUNTY BAR ASSOCIATION**

The McClain County Bar Association will participate in the Ask A Lawyer program from 5-7 p.m. in conjunction with the statewide effort to provide free legal advice.

## **MCCURTAIN COUNTY BAR ASSOCIATION**

On May 4, the Tri-County Bar Association, comprised of Choctaw, McCurtain and Pushmataha counties, will host a Law Day Banquet at the Idabel Country Club. Judge Deborah Barnes with the Oklahoma Court of Civil Appeals

will be the guest speaker. The dinner will begin at 6 p.m. with a social hour and the cost is \$25 per person. Please RSVP to Emily Herron at 580-286-7611.

Also on May 4, the MCBA will host a live Ask A Lawyer program on KBEL 96.7 FM at 8:30 a.m. The public is invited to call in and local attorneys will be answering questions.

The MCBA will also speak to schools in McCurtain County on the importance of separation of powers and equal branches of government throughout the month of May.

## **OKFUSKEE COUNTY BAR ASSOCIATION**

The Okfuskee County Bar Association will participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## **OKLAHOMA COUNTY BAR ASSOCIATION**

The Oklahoma County Bar Association will host the 2019 Law Day Luncheon on Wednesday, May 1, at noon at the Skirvin Hilton Hotel. The featured speaker this year will be Professor Robert Kerr from the OU Gaylord College of Journalism. Tickets are available by calling the OCBA at 405-236-8421.

The Ask A Lawyer program will take place Thursday, May 2, at the OETA studio from 9 a.m. to 9 p.m. and county bar members

will staff the state hotline. This community service event allows attorneys to assist the public by giving free legal advice over the telephone or via email. To sign up for this event, go to [www.okcbar.org](http://www.okcbar.org) or call Connie Resar at 405-236-8421.

### **OTTAWA COUNTY BAR ASSOCIATION**

The Ottawa County Bar Association will celebrate Law Day by holding a mock trial for all fourth- and fifth-grade students in Miami at the Ottawa County Courthouse on May 6. The trial will involve a civil suit where Mr. Wolf sues Little Piggy for damages caused when he came down Ms. Piggy's chimney into a pot of boiling water. Additionally, award presentations will be made to students for their winning art and essay entries in the OBA Law Day Art and Writing Contest.

The OCBA will also participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

### **PAYNE COUNTY BAR ASSOCIATION**

The Payne County Bar Association will kick off Law Day with a courthouse staff appreciation lunch on the Payne County Courthouse lawn on April 24 at noon.

The annual Law Day Banquet will be April 30 at 6:30 p.m. at Meditations. Three PCBA members who have practiced more than 50 years will be recognized – William Cabbage, Robert Hert Jr. and Charles McBride. To purchase tickets, contact Jimmy Oliver at 405-624-8383.

On May 2 at 1:30 p.m., winners of the Payne County Law Day Art and Essay Contest will be honored along with winners of the statewide Art and Writing Contest. The Hert Scholarship will also be presented.

The PCBA will participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

The PCBA will also host Lawyers at the Library at the Stillwater Public Library on May 3 from 9 a.m. to 2 p.m. Local attorneys will be available to offer free legal advice to community members on a walk-in basis.

Lastly, the PCBA will host a bowling tournament on May 8 from 6-8 p.m. for association members and the court clerk's office. Teams of five can register for \$100. All proceeds from the bowling tournament will go to CASA for Kids serving Payne and Logan counties.

### **PITTSBURG COUNTY BAR ASSOCIATION**

The Pittsburg County Bar Association will host a Law Day dinner at Pete's Place in Krebs on May 2. Oklahoma Innocence Project Executive Director Vicki Behanna will be the guest speaker.

On May 1, the PCBA will hold its Ask A Lawyer event from 6-8 p.m.

Additionally, a golf tournament is tentatively scheduled for May 10 and bar members will be speaking to classes at area schools on various topics.

### **PUSHMATAHA COUNTY BAR ASSOCIATION**

On May 4, the Tri-County Bar Association, comprised of Choctaw, McCurtain and Pushmataha counties, will host a Law Day Banquet at the Idabel Country Club. Judge Deborah Barnes with the Oklahoma Court of Civil Appeals will be the guest speaker. The dinner will begin at 6 p.m. with a social hour and the cost is \$25 per person. Please RSVP to Emily Herron at 580-286-7611.

### **POTTAWATOMIE COUNTY BAR ASSOCIATION**

The Pottawatomie County Bar Association will celebrate Law Day by speaking to local students regarding the justice system, Legal Aid, giving back to the community and the importance of helping others through the justice system. They will also be presenting awards to students who placed in the statewide Law Day Art and Writing Contest.

The PCBA will also participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.



*Law Day Committee members Richard Vreeland and Jennifer Prilliman participate in a radio interview on Law Day 2018.*

## **SEMINOLE COUNTY BAR ASSOCIATION**

As its birthplace, Law Day has always been special in Seminole County, and this year will be no different. To open Law Week celebrations, Seminole County's young lawyers and judges will speak to junior high students across the county about the legal profession and free speech, free press and free society in conjunction with this year's theme.

The county bar will host its fourth annual essay contest open to all county junior high students and high school seniors. The association will award a \$1,000 college scholarship to the winning senior essay contestant and a gift certificate to the winning junior high essay contestant.

The association will hold its annual Law Day CLE May 1. There will be six hours of CLE (including one hour of ethics) beginning at 8:30 a.m. at the Seminole County Courthouse in Wewoka.

The SCBA will host a Law Day Luncheon at the Rudolph Hargrave Community Center at noon on May 1. OBA President Chuck Chesnut will be the featured speaker.

Lastly, the SCBA will participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## **SEQUOYAH COUNTY BAR ASSOCIATION**

The Sequoyah County Bar Association will participate in the Ask A Lawyer program from 6-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## **STEPHENS COUNTY BAR ASSOCIATION**

The Stephens County Bar Association will host its annual Law Day Luncheon on Friday, May 3, at noon at the Simmons Center – Jack A. Maurer

Convention Center. The annual James Patterson Memorial Golf Tournament will be held immediately after the luncheon.

## **TEXAS COUNTY BAR ASSOCIATION**

The Texas County Bar Association will participate in the Ask A Lawyer program from 7-8 p.m. in conjunction with the statewide effort to provide free legal advice.

## **TULSA COUNTY BAR ASSOCIATION**

The Tulsa County Bar Association will celebrate Law Day with a variety of events. On April 11 at 11 a.m., a Naturalization Ceremony will be held at Booker T. Washington High School. A Naturalization Clinic will also be held on May 4 from 10 a.m. to 2 p.m. at the Tulsa County Bar Association.

An art and writing contest will be held for students in Pre-K through 12<sup>th</sup> Grade. The deadline to enter is April 12. Monetary prizes will be awarded by the Tulsa County Bar Foundation and art entries will be displayed at the Law Day Luncheon.

Also on April 12 at 11 a.m., a Law Day mock trial will be held at the Tulsa County Courthouse for Hamilton Elementary School second graders. The case will be *Three Bears v. Gold E. Locks*.

A Law Day Book Club will meet April 25, May 14 and June 18. Participants will meet to discuss *Killers of the Flower Moon* by David Grann, *How Democracies Die* by Steven Levitsky and Daniel Ziblatt and *My Dear Hamilton* by Stephanie Dray. Registration is required, free and limited to the first 15 who contact martha.carter@oscn.net.

The Law Day Luncheon will be held at the Doubletree Hotel on May 3. Ziva Branstetter with the *Washington Post* will be the keynote speaker. The Liberty Bell Award, honoring a nonlawyer's

contribution to the legal system, the Sandra Day O'Connor Award, honoring an educator who teaches legal civics and the Brunton-Will Continuing Legal Education Award, honoring a TCBA member who has dedicated years of services to educating other attorneys, will be given to deserving winners.

On May 2, the TCBA will participate in the Ask A Lawyer program by helping staff the statewide hotline from 9 a.m. to 9 p.m. in conjunction with the statewide effort to provide free legal advice.

## **WAGONER COUNTY BAR ASSOCIATION**

The Wagoner County Bar Association will participate in the Ask A Lawyer program from 6-9 p.m. in conjunction with the statewide effort to provide free legal advice.

## **WASHINGTON COUNTY BAR ASSOCIATION**

The Washington County Bar Association will participate in the Ask A Lawyer program from 6-8 p.m. in conjunction with the statewide effort to provide free legal advice.

The WCBA is also planning a Law Day Golf Tournament at the Hillcrest County Club in late May and will volunteer to make Law Day-related presentations at Bartlesville Public Schools.

## **WASHITA COUNTY BAR ASSOCIATION**

To celebrate Law Day, Washita County Bar Association members will provide presentations to local students on May 2 at the Washita County Courthouse. The topic of the presentation will be the history and application of the First Amendment's role in protecting the freedom of the press in the United States. The students will then tour the *Cordell Beacon* office and meet the local journalists to discuss the impact of the First Amendment on their role in our society.

# Proclamation and Directive







**THE SUPREME COURT OF OKLAHOMA**

OKLAHOMA JUDICIAL CENTER  
2100 N. LINCOLN BLVD., SUITE 1  
OKLAHOMA CITY, OKLAHOMA 73105

**NOMA D. GURICH**  
Chief Justice

(405) 556-9362  
FAX (405) 556-9120  
noma.gurich@osca.net

**OKLAHOMA SUPREME COURT DIRECTIVE**

**OBSERVANCE OF LAW DAY  
MAY 1, 2019**

**"Free Speech, Free Press, Free Society"**

All courts in each of the twenty-six judicial districts in Oklahoma are urged to hold Law Day activities. These activities may include courtroom ceremonies, courthouse tours and mock trials. The cooperation of the judges and court clerks is essential for Law Day special events.

This year is the 62<sup>nd</sup> annual nationwide observance of Law Day. Law Day is sponsored by the Oklahoma Bar Association, each of the seventy-seven County Bar Associations and the American Bar Association. Law Day programs should be keyed to the 2019 theme: "Free Speech, Free Press, Free Society."

DONE THIS 25<sup>th</sup> DAY OF FEBRUARY, 2019.

SUPREME COURT OF OKLAHOMA

*Noma D. Gurich*

Noma D. Gurich  
Chief Justice



Oklahoma Supreme Court Chief Justice Noma Gurich (seated) signs the Law Day Directive. Witnessing the signing are (from left) OBA President-Elect Susan Shields, Law Day Committee Chair Kara Pratt and Committee Vice Chair Ed Wunch.

# You Mean the Government Can Control My Guns?

## The Estate Planner's Guide to Firearm Distribution in Oklahoma

By Gale Allison, Rebecca Wood Hunter and Vale Gonzalez

**ILLEGAL FIREARM TRANSFERS** have potentially severe consequences to both the transferor and the transferee. Estate planning and probate attorneys need to be aware of these potential traps and inform their clients that fines of up to \$10,000 and jail time of up to 10 years (or both) can be imposed for improper transfers of certain firearms.<sup>1</sup> Additionally, establishing estate planning tools to protect the parties involved in the transfer will assist in complying with federal and state law, helping to protect fiduciaries and beneficiaries.

### THE ESTATE PLANNER'S ROADMAP

For estate planners, having one more issue to consider, on top of the other hundreds of issues which need to be covered, is not easy. Even with the best of intentions by trustees and estate representatives, improper firearm transfers can lead to criminal charges, fines and jail time. To best prepare estate planning documents and provide proper guidelines for fiduciaries, estate planners must understand the complexity of federal and state laws as these laws relate to the transfer. Once the laws are

understood, estate planners can customize estate planning documents to provide protections to reduce the potential for fiduciary liability and to ensure that fiduciaries and beneficiaries are not inadvertently breaking the law.

Gun trusts structured to comply with the National Firearms Act (NFA)<sup>2</sup> provide several incentives that make them the go to vehicles of choice for NFA firearms. NFA firearms have more restrictions and legislation than other firearms due to their destructive potentials. Since NFA firearms are heavily regulated, there are numerous issues involved in the transfer of these firearms. The benefits of the NFA gun trust include: 1) allowing for use of the NFA firearms by multiple individuals during the gun's ownership by the trust, not just use by a single owner; and 2) assistance in facilitating transfers to qualified beneficiaries.

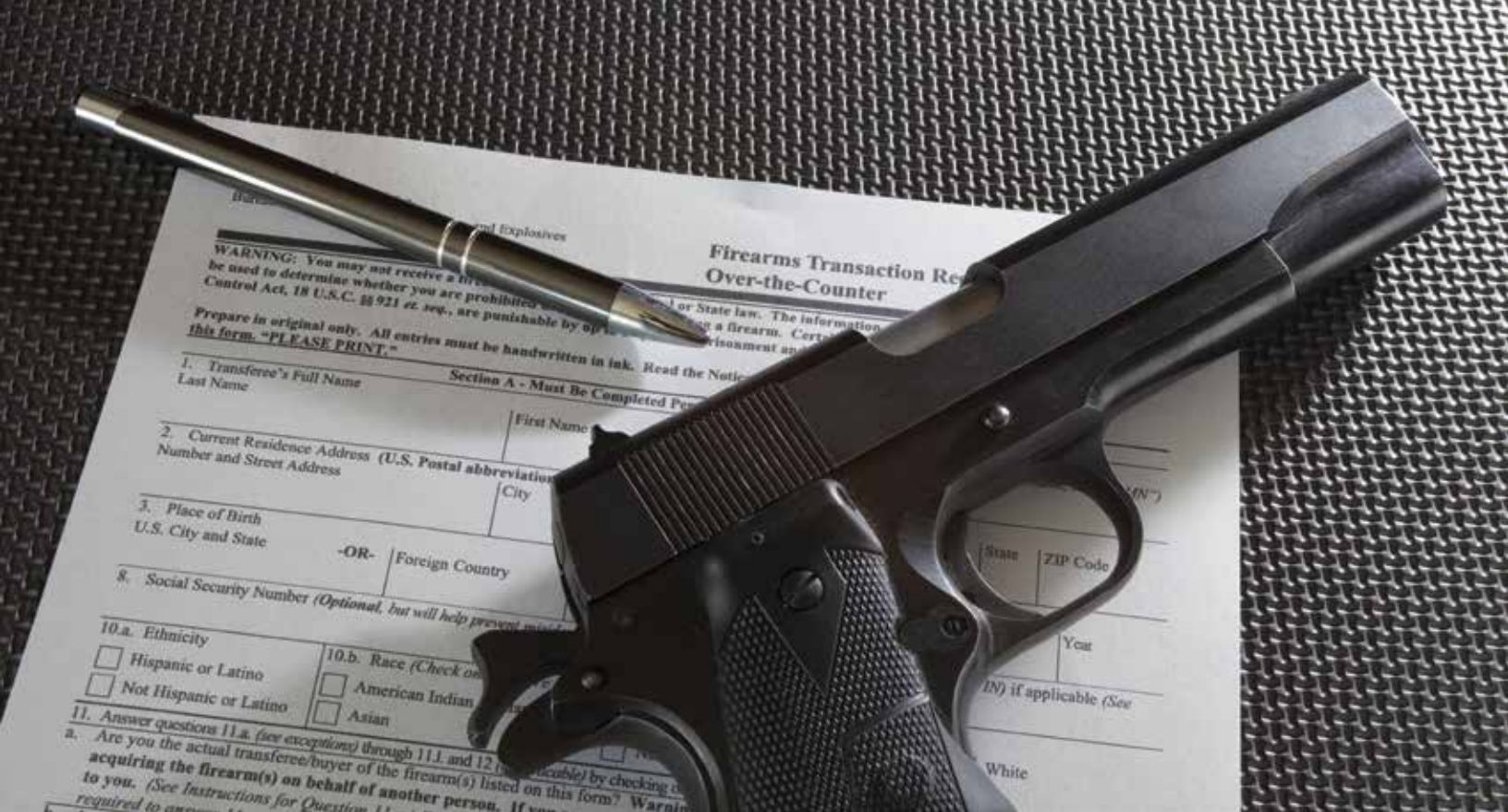
### FEDERAL FIREARM CONTROL – THE ESSENTIALS

There are two federal acts that affect how a fiduciary of a decedent's trust or estate must distribute firearms. These laws are known as the Gun Control Act (GCA)<sup>3</sup> and

the NFA<sup>4</sup>. Each of these laws limit its scope to certain types of firearms. The purpose of the GCA is to control interstate transfers of *all* guns, while the NFA places license requirements for possession of certain types of firearms considered more dangerous.

The GCA defines the word firearm in a broad sense and includes all firearms, embracing those firearms contained in the NFA. The NFA defines firearm in a narrower sense than that of the GCA's definition. To remove confusion, this article references GCA firearms as "firearms" and NFA firearms as "NFA firearms." The guide also uses "gun" to reference both firearms and NFA firearms. This article limits itself to federal and Oklahoma law, though other state laws<sup>5</sup> must be reviewed if a firearm is involved in an interstate transfer, later discussed.

The main objective for estate planners and probate attorneys is to make a legal transfer of guns. The following questions must be answered to assist in making a legal distribution:



- *What is the gun's category?* It can either be a GCA firearm or a NFA firearm. If it is a NFA firearm, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) requires forms from the fiduciary and the beneficiary. A NFA firearm without proper ATF registration and a proper transfer on ATF forms makes the firearm contraband and it must then be forfeited to the ATF or risk jail time and fines.
- *Where is the beneficiary residing? Is it an intrastate or interstate transfer? How do I get the firearm to the beneficiary?* In intrastate transfers, using common carriers or physically handing the weapon to the beneficiary is allowed. If interstate, the transfer can be accomplished by physically delivering the firearm to the beneficiary, using a federal firearms licensee (FFL) (later discussed) or mailing to a FFL through

USPS, UPS or FedEx (which each have their own set of restrictions).

- *Is the fiduciary aware of any issues which would make the receiving beneficiary ineligible to possess a firearm?* If so, you *may not* legally transfer. Knowingly transferring firearms to a restricted person is illegal. If the transfer is intrastate, federal and Oklahoma restrictions apply. If the transfer is interstate, federal law as well as the beneficiary's residing state laws apply. The law of the beneficiary's state of residence may have further procedures for transfer of a gun or prevent other categories of individuals from possessing firearms.
- *How do I make the transfer legal?* If it is a NFA firearm, follow the proper documentation required by the ATF later outlined. If it is a GCA firearm, Oklahoma does not require firearm documentation in

an intrastate transfer. If it is an interstate GCA firearm, no transfer documentation is required, unless the beneficiary's resident state requires it.

These questions should be addressed with your clients so that guidelines can be set out within estate planning documents to ensure compliance with the law during weapon transfers. Knowing if a beneficiary can legally receive the weapon (at the time of distribution) and indicating proper directions on distributions of firearms helps to ensure that the distribution will occur in a legal manner. Furthermore, having a fiduciary instruction package that further details the nuances of gun transfers will aid transfers that comply with legal requirements. If NFA firearms are part of a client's property, preparing a NFA trust that is specifically structured to block any potential illegal transfers from occurring will reduce the risk of a client's undesired contact with law enforcement for violation of federal and state laws.

## **GUN CONTROL ACT**

For the GCA to apply, a firearm must be transferred in interstate commerce. A transfer occurring within the same state is not within the scope of the GCA. The GCA provisions never replace state law, only add to it. Since the GCA law does not replace state law, both the fiduciaries and transferee's residing state law will apply to interstate transfers. To illustrate, a transfer of a firearm between residents of Oklahoma and Texas are required to comply with both Oklahoma and Texas law as well as the GCA.

### *GCA Firearm Definitions*

The GCA defines the type of firearms within its scope. Since the GCA broadly defines firearms, most firearms will be covered by the GCA. Antique firearms, firearms outside the scope of the GCA, can be defined into categories both of which require: 1) the manufacturing of the firearm prior to 1899; 2) the firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition; and 3) any firearm using fixed ammunition for which ammunition is no longer manufactured in the United States and is not readily available.<sup>6</sup>

"Destructive device"<sup>7</sup> is a catch-all term which falls within the scope of the GCA. A destructive device generally fits into one of three categories: 1) an explosive, incendiary or poisonous device; 2) any kind of weapon that has a barrel larger than one-half inch in diameter (an exception exists for shotguns if the attorney general finds the weapon suitable for sporting purposes); or 3) any parts designed or intended for use to create any of the previously mentioned items.<sup>8</sup>

### *Federal Firearm Licenses*

The GCA created a transferring system to control firearm trafficking by using federal firearm

licensed dealers (FFLs) – special license holders typically required when a firearm is transferred interstate.<sup>9</sup> FFLs include gun brokers and dealers who issue background checks and ensure transfers follow state and federal laws. The general rule is that fiduciaries are not required to use a FFL for transfers occurring through bequest or intestate succession.<sup>10</sup> For the rule to apply, it requires the beneficiary receiving the firearm do so through bequest or intestate succession, and transferees must be able to lawfully possess the firearm in their residing state. However, the best practice for interstate transfers would be to transfer by way of a FFL.

## **NATIONAL FIREARMS ACT**

The NFA requires additional licensing and regulation for possession of certain guns the federal government deems more dangerous, and the act details the process necessary to legally transfer a NFA firearm. The NFA, unlike the GCA, is not limited to interstate commerce and applies to all NFA firearms regardless of the fiduciary's and beneficiary's residency. Some firearms in the NFA include short-barreled shotguns and rifles, machine guns and explosive devices.<sup>11</sup> Penalties are substantial if the NFA is violated.<sup>12</sup> Since the NFA has specific requirements for a transfer to be legal, placing specific restrictions within a NFA gun trust helps secure all parties involved from receiving fines and criminal charges. Understanding what restrictions are necessary to include in estate documents is crucial to prepare for any potentially illicit transfers.

## **ILLEGAL TRANSFERS – RESTRICTED PERSONS**

A fiduciary who is prohibited from owning or possessing a weapon of any kind should not be appointed as the representative of

an estate or be the trustee of a trust in which any guns or weapons are involved. Doing so could impose severe penalties and potential jail time for the individual.

In an initial assessment of distribution of guns, fiduciaries must evaluate whether they have knowledge or reasonable cause to believe that any beneficiary is a person who is a "restricted person." A restricted person is a person the GCA or state law has forbidden from acquiring or owning a gun. In the estate planning context, this will likely require a review of the client's knowledge of the prospective beneficiaries. The law punishes individuals, including fiduciaries, who knowingly transfer firearms to these restricted persons. If the proposed gun transfer is to a beneficiary outside of Oklahoma, then the beneficiary's state law may have additional categories of restricted persons. Fiduciaries must comply with federal law and the beneficiary's state laws or risk criminal liability. Assessing the laws of the beneficiary's estate and applying restrictions within the estate planning documents to provide for a contingent beneficiary streamlines the process in case of a restricted beneficiary.

### *Federal Law*

Categories of restricted persons are found in the GCA. Keep in mind both non-NFA and NFA firearms are subject to this GCA. A restricted person includes anyone convicted of a crime punishable by a term exceeding one year, a fugitive, an unlawful user of or someone addicted to a controlled substance, someone who has been committed to a mental institution or adjudicated to have a mental defect, an alien, a service member who has been dishonorably discharged, anyone who has renounced his or her U.S. citizenship, most instances

where someone has had a protective order entered against him or her in domestic related matters and anyone convicted of a misdemeanor for domestic violence.<sup>13</sup>

#### *Oklahoma Law*

Oklahoma law has two relevant statutes of concern to a fiduciary. In Oklahoma, it is unlawful to knowingly furnish a firearm to an incompetent person<sup>14</sup> or to transfer firearms to convicted persons.<sup>15</sup> While it is not required that a fiduciary investigate the status of the person receiving the firearm, it is strongly recommended that reasonable steps are taken to deliver guns to only nonrestricted individuals. Fiduciaries do not have an affirmative duty to issue a background check in Oklahoma, but they may be required to if the beneficiary's state law requires it, or if the fiduciary has reasonable cause to believe the beneficiary is a restricted person. Nevertheless, care should be taken by the fiduciary if there is any reasonable basis to suspect the person may fall into the category of a "restricted person." Since no laws exist in Oklahoma establishing an affirmative duty on the fiduciary to conduct a thorough investigation prior to a transfer, discussing potential liabilities during the estate planning stage is essential.

#### *Fiduciary Duties*

There is a distinction between federal and Oklahoma law regarding a fiduciary's duty to determine whether an individual is a restricted person for purposes of a potential transfer of a gun. Federal law indicates that a fiduciary cannot convey the gun to any person who the fiduciary "knowing or having reasonable cause to believe" may be a restricted person, while Oklahoma law uses the term "knowingly," seeming to indicate that there is less of a burden of investigation as to the restricted status of the beneficiary. The laws seem to indicate that to avoid criminal liability, the fiduciary must simply establish that she has *no reasonable cause* to believe that person is a restricted person. However, the better practice would be to do some investigation to determine that the beneficiary is not clearly a restricted person. Additionally, a good practice might include having the beneficiary sign an affidavit that he or she does not fall into the category of a restricted person. If there is reasonable cause for concern that a beneficiary might be a restricted person, a fiduciary should follow up with a background check prior to transfer.

#### **METHODS OF DISTRIBUTION**

A fiduciary has different options available when distributing a firearm, and the options vary depending on the beneficiary's state of

residency. If the beneficiary is an out-of-state resident, the GCA does not bar the transfer, but certain obstacles can present themselves if mailing is the desired distribution method. There are three available methods of distribution, which are: 1) physically handling the firearm; 2) mailing the firearm to a FFL; and 3) mailing directly to a non-FFL individual. Although the following methods apply to all firearms, NFA firearms have additional requirements and paperwork which will be discussed later.

Physically handing the firearm to the beneficiary is the simplest of all the methods of distribution. It does not matter if the beneficiary is an Oklahoma resident or not, the fiduciary can legally hand the firearm to the beneficiary. However, if it is a NFA firearm, ATF forms and approval from the ATF are necessary for a legal transfer.<sup>16</sup>

A fiduciary, unless they are a licensed gun dealer or broker, is considered a non-FFL individual. Although a fiduciary is allowed to transfer the firearm interstate by mail, it may be a difficult method to use. Reviewing the ever-changing policies of courier services prior to mailing from a non-FFL individual to another non-FFL is difficult, can lead to violations and is not recommended; additionally, finding a carrier to mail directly to the beneficiary may be problematic. Mailing to a FFL is the best practice for delivery to a beneficiary out of state.

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While it is not required that a fiduciary investigate the status of the person receiving the firearm, it is strongly recommended that reasonable steps are taken to deliver guns to only nonrestricted individuals.

## ADDITIONAL REQUIREMENTS FOR NFA FIREARM TRANSFERS

The ATF oversees NFA firearm transfers. The ATF requires fiduciaries and beneficiaries to supply certain documents prior to transferring the NFA firearm. A typical NFA transfer takes approximately six to eight months so starting the process early is crucial. Once the fiduciary determines he or she must transfer a NFA firearm, the fiduciary must attempt to locate any registration forms tied to the NFA firearm. If no license or documents exists, the fiduciary must contact the ATF and send proof of executor's appointment, or authority through trust, so registration documents can be released to fiduciary. If the NFA firearm is not registered, it is considered contraband and *must be forfeited to an ATF office*.

If the NFA firearm is registered, the fiduciary must file Form 5 (Application for Tax Exempt Transfer and Registration of Firearm) found on the ATF website, as well as documents showing: 1) the executor's power, such as by will or court order appointing executor; 2) documents showing the beneficiary's right to the NFA firearm such as a probated will with a decree of distribution or a trust; and 3) a FBI Form FD-258 containing beneficiary's fingerprints. No transfer should occur *until* the ATF has approved it. If the transfer is to an out-of-state beneficiary, the NFA requires a fiduciary to file Form 20 (Application to Transport Interstate or to Temporarily Export Certain National Firearms Act Firearms) with the ATF.

## NFA GUN TRUSTS

A NFA gun trust is a creature of state law made specifically for NFA firearms. These trusts are often referred to as "gun trusts." The ATF will consider a gun trust valid as long as it appears valid on its face. Like other trust assets,

NFA firearms held in gun trusts become nonprobate assets. One of the key benefits to a gun trust is that it allows more individuals access to the firearm (without a gun trust, there are strict rules over who can use a NFA weapon

occur; 2) the trustee must notify the proper authorities if a firearm is moved to another state; and 3) clear provisions must be contained in the trust that outline the exact forms necessary when the firearm is transferred to a beneficiary.



and unauthorized use is subject to criminal penalties), subject to the care and responsibility of the trustee, as well as allowing the trustee access to the firearm.<sup>17</sup> Gun trusts must be approved by the ATF and have required forms, fingerprinting, background searches and notification to a chief law enforcement officer that must be submitted. Typical approval time with the ATF generally runs six to eight months. Although non-NFA firearms can be part of a NFA trust, it would not be wise to include them since NFA trusts place heavy restrictions and limitations on the firearms. The better practice is to include non-NFA firearms in a traditional trust. With a NFA gun trust, three different types of instructions must be placed in the gun trust so the trustee can adequately enforce the trust and comply with federal law: 1) the language of the trust must ensure proper transfer procedures

The gun trust should contain a provision that limits the trustee's power to transfer, dispose, sell, assign or otherwise transfer the NFA firearm unless ATF approval is acquired. This provision serves to inform the trustee of his duties and obligations so ATF requirements are met and serves to counter the presumptions that trustees can dispose of property as any owner would in a normal trust. Additionally, the power of the trustee to transport NFA firearms should be limited as well. Since the GCA limits the transfer of certain NFA firearms, a provision within the trust should limit the transfer until after ATF approval is granted through Form 20.

Revocation of a gun trust can lead to criminal liability and civil penalties. The ATF considers revocation a transfer. That can lead to issues if the trust is dissolved. For example, if A, B and C create a gun trust that holds a

machine gun and later the trust is dissolved, where would the firearm go? To guard against this potentially dangerous outcome, it is suggested that, for gun trusts with multiple settlors, a provision be included in the trust allowing for one specified settlor who would pay the other settlors their fair share of contribution for the guns included in trust if the trust were to be dissolved. Appropriate transfer forms would have to be completed with the ATF.

A transfer by revocation is not illegal on its face but can be dangerous since it can be an illegal transfer without proper precautions and approved paperwork. Keep in mind that a transfer must be documented by following all NFA procedures required by the ATF. Prior to revocation, a Form 4, fingerprinting the transferee and notifying a chief legal enforcement officer are required for a legal transfer to occur since the firearm is moving from the trust to a person.

As a safeguard provision, a gun trust should contain a provision that a revocation by the settlor is not allowed until ATF approval is received, and the gun trust should further provide that the settlor cannot alter or remove this same provision. An alternative provision would be to completely disallow changing the provisions of the trust unless necessary to comply with the law. While this is a much harsher alternative, it would disallow settlor revocation and prevent against tampering with the trust which might result in an illegal transfer.

## CONCLUSION

Great care should be taken when advising clients on the transfer of any type of gun or other weapon by will or trust to avoid any liability to a future fiduciary and carrying out the wishes

of a decedent. For additional information, it is suggested that the ATF website and related documents be reviewed for updates.

*Authors' Note: Rebecca Wood Hunter is the author of Westlaw's Bogert's Trusts and Trustees, June 2018 Update chapter "Revocable Trusts §1089 Gun Trusts."*

## ABOUT THE AUTHORS

Gale Allison has four decades of estate, trust and tax experience as an estate and trust lawyer and consultant. A former litigator for the federal government and estate tax attorney for the IRS, she is now in private practice with Schaffer Herring PLLC in Tulsa and mediates business, estate/trust, elder care and family issues exclusively through Dispute Resolution Consultants.

Rebecca Wood Hunter is the founder of Rebecca Wood Hunter PLLC law office located in Coweta. She has a general civil practice with a heavy emphasis in estate planning, probate and family law matters. She speaks across the state on various topics related to estate planning.

Vale Gonzalez graduated in December 2018 from the TU College of Law. He has a B.A. in criminology from the University of Texas at Dallas. Fluent in Spanish and English, he has worked in estate and trust law, federal and state criminal defense and pro bono immigration cases.

## ENDNOTES

1. 26 U.S.C. §5871.
2. Pub. L. No. 90-618, 62 Stat. 1214 (codified as amended at 18 U.S.C. §§921-931 (2012).
3. Pub. L. No. 90-618, 62 Stat. 1213 (codified as amended at 18 U.S.C. §§921-931 (2012).
4. Pub. L. No. 73-474, 48 Stat. 1236 (codified at IRC Ch. 53) (June 26, 1934).
5. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) publishes a reference guide with regard to state laws. However, state laws should be specifically checked as they are constantly revised and renumbered and the ATF's manual was last updated in 2011. ATF P 5300.5; [www.atf.gov/firearms/docs/state-laws-and-published-ordinances-firearms-2010-2011-31st-edition-atf-p-53005](http://www.atf.gov/firearms/docs/state-laws-and-published-ordinances-firearms-2010-2011-31st-edition-atf-p-53005).

6. 18 U.S.C. §921 (g).
7. 18 U.S.C. §921 (a) (4).
8. *Id.*
9. A great source of information regarding FFLs is located on this form within the ATF website: [www.atf.gov/resource-center/docs/0813-firearms-top-12-qaspdf/download](http://www.atf.gov/resource-center/docs/0813-firearms-top-12-qaspdf/download).
10. 18 U.S.C. §922(a)(3)(A).
11. 26 U.S.C.S. §5845 (a), (b), & (e); Unlawful constructive possession, an issue found in *U.S. v. Turnbough*, 1997 U.S. App. LEXIS 11886, \*6 (7th Cir. May 1997) found that the government can find a defendant to have constructive possession of a firearm when the individual had ownership, dominion or control of the place the firearm was stored. However, the court did state "that if a firearm is owned by the trust and the owner's spouse is also designated as a trustee, the spouse then would have full permission to use the NFA item held in the trust and could not be prosecuted for unlawful possession of the firearm."
12. 26 U.S.C. §5871.
13. 18 U.S.C. §922(g).
14. 21 O.S. §1289.10.
15. 21 O.S. §1239.12.
16. Additional laws apply for crossing state lines with guns.



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# Zero Cash Flow Investing: Utilizing ZCF Properties to Satisfy 1031 Exchanges and Extract Value

By Jeff Tracy

**I**NVESTING IN REAL ESTATE, whether through residential, multifamily or commercial properties, has long since been a staple of family office and high-net-worth individuals' portfolios and related estate plans. While different in practice from each other, property ownership in general has proved to be a stable investment over the long term and a good vehicle to increase net worth.<sup>1</sup>

Investing in net lease properties is an area where many commercial real estate investors choose to start. There are several types of net lease properties for investors to consider, and a variety of financial structures and vehicles can be used to acquire these assets. For example, an investor may purchase an asset with a single-tenant, triple-net lease. This triple-net lease allows an investor to acquire a free-standing, single-occupant commercial property with the tenant assuming responsibility for all expenses – most notably the taxes, insurance and maintenance – related to the property for a set term length. This gives the tenant control of the property while providing investor

owners with steady, dependable “mailbox” money with virtually no responsibilities.

Other options include acquiring property under a double-net lease, which is similar in structure to triple-net, but the owner of the property is typically responsible for capital improvements to the roof and structure while the tenant remains liable for all other costs and expenses. However, there is another structure in the net-lease market that is largely overlooked and underutilized by investors, especially high-net-worth individuals who are looking for tax benefits not offered through traditional real estate investments: zero cash flow (ZCF) properties.

A ZCF property is highly leveraged and backed by a long-term, bond-quality lease guaranteed by an investment-grade tenant. Typically, the tenant is on a lease of 20 years or more and has an investment-grade credit rating. The result is that a lender is comfortable with monetizing the entire rent stream so the financing amounts to 100 percent of the rent through a nonrecourse, assumable, fixed-rate mortgage. The term “zero cash

flow,” or “zero” as it is sometimes called, refers to all the property's net operating income going to service the underlying loan, and there is no money remaining to be distributed to the owner. This might not sound attractive to all investors, but a property and related lease with this structure provides numerous financial benefits.

## OVERVIEW OF THE ZCF MARKET: VALUATION METHOD AND PRICING

Most commercial investment properties are priced through a cap rate, which is simply a way to evaluate the unlevered return an investor can expect to receive on an investment. A cap rate is calculated by dividing the net operating income by the purchase price. For example, if you buy a property for \$1 million and the net operating income is \$100,000, you purchased that property at a 10 percent cap rate ( $\$100,000/\$1,000,000$ ). While there are a variety of factors that can impact cap rates, there are three primary factors that provide for the biggest impact on the rate: credit of the tenant, quality of the underlying real estate and term of the lease.





The credit of the tenant, or more accurately the guarantor, is the first factor to consider as the investor is essentially underwriting and investing in the steady cash flow that comes from the triple-net structure of the lease. The lease and related income stream are only valuable for as long as the tenant remains in business. The stronger the guarantor's credit, the lower the risk to the cash flow and thus the lower return and related cap rate.

Because the value in the income stream is derived from the tenant's ability to continue to pay rent, the underlying real estate is typically a secondary consideration. With that said, two similar properties situated in two different geographies will drive different risk and different cap rates. For example, a FedEx distribution facility in Chicago will drive a better price (*i.e.*, a lower cap rate) than the same facility in a tertiary market. Similarly, a Walgreens will drive a better price in Tulsa than in one of its rural suburbs.

The last consideration is the length of the lease. Again, because the value in the lease is the cash flow it generates, the longer the

lease provides for the payment of that rent, the less risk and consequently the lower the cap rate. That is, all else being equal, a lease with 15 years left on the term is more valuable than a lease with just five years remaining.

example is a worst-case scenario in favor of the traditional triple-net property. In practice, the equity obligation in a ZCF as compared to a traditional triple-net property is usually substantially lower, making ZCF properties highly

transaction given the low equity requirement. A buyer coming out of a sale with more modest leverage, or even all cash, may look to a zero in order to take advantage of the paydown/readvance feature available to them via the loan agreement. In short, this paydown/readvance feature allows the purchaser to put down funds generated by the initial sale toward the purchase of the subject property, thus meeting the 1031 exchange equity requirements. In turn, the lender will readvance funds back to the purchaser up to the amount of the loan balance on the transaction date. *Importantly, those funds are readvanced on a tax-free basis.*

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The paydown/readvance feature is a key benefit in ZCF structured deals. This feature allows the purchaser of the ZCF property to put down funds generated by the initial sale toward the purchase of the subject property, thus meeting the 1031 exchange equity requirements.

ZCF properties are valued differently though. While a cap rate can be calculated using typical methodology, *ZCF properties are valued by the amount of equity on top of the debt that is required to acquire the property, with most zeros trading for an equity position of 10 percent to 20 percent above the debt, rather than a typical transaction where a buyer would need to bring 30 percent to 40 percent equity.* This unique value calculation results in ZCF properties serving as the most inexpensive way to acquire a quality commercial asset. For example, a typical \$5 million triple-net property would require at least 30 percent equity resulting in an equity obligation of \$1.5 million. In the ZCF scenario, however, if the equity obligation is reduced to 20 percent and the full debt stays at \$5 million, a buyer would only need to bring \$1 million to the closing table. Keep in mind, this

sought after and coveted. To give some context, there is approximately \$2 billion of inventory in ZCF deals mixed across roughly 140 available properties, with some of those properties being offered as portfolios rather than on an individual basis. In comparison, there is more than \$26 billion of traditional net-lease supply currently on the market, illustrating the rarity of ZCF offerings.

#### **ZCF BUYER TYPES**

There are generally two instances where a buyer would want to acquire a ZCF property. The first is the typical 1031 exchange buyer which, with the financing already in place and assumable at low cost, makes the ZCF structure attractive. A 1031 exchange buyer coming out of a high-leverage sale with minimal sale proceeds may look to a zero to fulfill their up-leg portion of the

The second instance where a ZCF property is a good option is the high-net-worth individual who does not need or want the positive cash flow typically received from most commercial property investments. Instead, *the high-net-worth individual uses the loss through the depreciation and interest expense of the property to offset gains in other assets or investments.* Importantly, the losses in the early years of the lease may be significant, especially if the owner utilizes accelerated depreciation. As the term progresses, however, the loan balance decreases as does the related reduction in interest expense. As a result, the lease will often generate “phantom income” beginning in year 10 to 12 and will occur for the remainder of the term.

#### **PAYDOWN/READVANCE FEATURE**

The paydown/readvance feature is a key benefit in ZCF structured deals. This feature allows the purchaser of the ZCF property to put down funds generated by the initial sale toward the purchase of the subject property, thus meeting the 1031 exchange equity requirements. In turn, the lender will readvance funds back to the

purchaser up to the amount of the loan balance on the transaction date, allowing the owner of the property to extract the equity from the property tax free.

There are two ways this paydown/readvance feature can be structured in the debt instrument: the traditional paydown/readvance language or a Substitute Collateral Right. The standard paydown/readvance language will look something like the following:

If the Company exercises the Paydown Option, the Company may request a readvance of the Principal Paydown Amount (the "Readvance Principal Amount") which if advanced shall be deemed an advance of principal pursuant to the Senior Note (the "Readvance Option") on any Business Day during the Readvance Option Period upon satisfaction of the Readvance Conditions (as hereinafter defined). The Company may exercise the Readvance Option, if at all, by giving written notice to the Mortgagee (or its designee) of the Company's intention to exercise the Readvance Option (the "Proposed Readvance Notice"), which must specify the amount of the Readvance Principal Amount and the date on which the Readvance Principal Amount is to be disbursed (the "Readvance Date").

The Substitute Collateral Right language, on the other hand, is a second option and may be included in the debt instrument.<sup>2</sup> The Substitute Collateral Right produces the same result as the paydown/readvance feature above but does so in an infinitely more complex way. In short, the Substitute Collateral Right allows an owner of a ZCF property to extract equity through the issuance of a new debt

instrument on the property which is backed by the cash being pulled out by the owner. Before the new note is created, the owner and a newly created bankruptcy remote, special purpose entity with substantively identical organizational documents execute an assignment and assumption agreement which assigns the cash collateral to the new entity, and the new entity assumes the debt obligations under the new note. Upon the satisfaction of numerous conditions, the owner then has the right to assume the debt of the newly created entity and the grantee executes a termination statement that releases its security interest in the cash collateral. The cash collateral funds are then released to the owner.

Regardless of the structure and language used in the debt instrument for the paydown/readvance feature, the end result is the same – *the new owner of the ZCF property and related lease receives the readvanced dollars tax free*. At this point, the owner is able to use the funds for any purpose, including funding new business investments, acquiring additional properties with a new baseline or acquiring securities.

## ILLUSTRATION OF ZCF TRANSACTION

As noted above, in addition to the tax loss and relatively low initial equity investment, the most significant benefit for most investors is the paydown/readvance feature which provides for the tax-free extraction of equity dollars through either the standard paydown/readvance or Substitute Collateral Right language in the existing mortgage documents. In practice, here is how the feature works.

An owner of a traditional investment property is preparing to sell the asset for \$20 million and exchange into a ZCF property. She has held the property for a substantial period of time resulting in a debt obligation of \$5 million with \$15 million of equity. The owner has identified a ZCF property she can purchase for \$20 million with \$2 million as equity (approximately 11 percent above the debt) and assuming \$18 million of debt. The owner applies the full \$15 million in cash to purchase the ZCF replacement property, thus meeting the equity obligations of the 1031 exchange. The debt obligation is also covered



as the \$18 million of debt clearly covers the \$5 million of outstanding debt on the original property. Prior to closing, the owner notifies the lender of her intent to exercise the paydown/readvance feature in the loan documents after closing. The owner closes on the sale of the ZCF property, and her 1031 exchange is complete.

The next day, or whenever she wants to within the timing restrictions in the debt instrument for the ZCF property, the owner engages the mortgagee and provides notice of her intent to exercise the paydown/readvance or the substitute collateral feature within the debt instrument. The owner had applied the full \$15 million in equity to the purchase price, and of that \$15 million, \$13 million is available as excess from the \$2 million of equity required to purchase the property. At this point, the debt is readvanced from \$5 million to the original \$18 million, with the proceeds of \$13 million going to the ZCF owner. As a result, the income deferment protections under the 1031 have been successful and the owner has pulled out \$13 million in nontaxable proceeds from the transaction.

## CONCLUSION

In conversations with friends, family, investors and attorney colleagues about ZCF properties, I often hear two questions. First, “Does the IRS know about ZCF properties?” and second, “Why have I never heard of ZCFs?”

To address the first question, yes, the IRS is aware of these types of transactions. Congress recently restructured the tax code and added provisions and investment opportunities that expanded the tax advantages that real estate investors can achieve (*i.e.* opportunity zones, leaving the 1031 in place, etc.). Had Congress wanted to address or even eliminate the

ZCF option, they most certainly could have done so. As for the second question, as mentioned earlier, the ZCF structure is not well known and often overlooked, and the perceived complexity of the structure is a primary cause.

Hopefully, this article provided enough general knowledge about the ZCF structure that you, the real estate, estate planning or M&A practitioner can ask your clients this question: “Have you considered a ZCF property?” Clients do not rely on their advisors to simply answer their questions. Instead, clients often wonder, “What questions am I not asking that I should be?” With even a basic understanding and awareness of the ZCF structure, advisors will be better equipped to serve their clients.

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## ABOUT THE AUTHOR

Jeff Tracy is an associate at Stan Johnson Company. He focuses on the disposition and acquisition of net lease office, retail and industrial properties nationwide with a focus on providing sale leaseback and zero cash flow advisory services to corporations, high net worth individuals, family offices and private equity firms.

## ENDNOTES

1. Jorda, Oscar, Katharina Knoll, Dmitry Kuvshinov, Moritz Schularick, Alan M. Taylor. *The Rate of Return on Everything, 1870-2015*. See also Egan, John. “Where is Smart HNW Money Going?” *www.nreionline.com* June 3, 2018.

2. The Substitute Collateral Right language is not included due to its length. Instead, a summary of the structure is included which condenses approximately 15 pages of defined terms, exhibits, conditions and “*provided further*” language into a single paragraph. All SCR language in the debt instrument should be thoroughly reviewed and understood prior to finalizing any ZCF transaction.

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In 1949 postwar prosperity began, the first Volkswagen Beetle was sold in the U.S., gas was 17 cents a gallon, China became a communist country, Russia had the nuclear bomb and TV soap operas were introduced.



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In 1969 Neil Armstrong and Buzz Aldrin became the first men to walk on the moon, the Woodstock music festival attracted 350,000 rock-n-roll fans, children's TV show *Sesame Street* debuted and the Pontiac Firebird Trans Am muscle car was introduced.



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# Day at the Capitol Speakers Provide Insightful Information

*By Angela Ailles Bahm*

**O**N MARCH 12, the Legislative Monitoring Committee presented the OBA's annual Day at the Capitol event. The speakers were exemplary. We were particularly honored to host General Counsel for Gov. Stitt Mark Burget. I believe this may have been a first (and hopefully not a last) to have a direct representative of the governor at this meeting. Presenters also included Attorney General Mike Hunter, Oklahoma Supreme Court Chief Justice Noma Gurich, Cleveland County District Judge Thad Balkman and Administrator of the Courts Jari Askins.

During lunch, we were honored to have former President Pro Tem Glenn Coffee and former Rep. Randy Grau give us some direction on how to talk to legislators. We were delighted to have this as another first, two former members, one from each chamber, provide us with their unique perspectives. Following the presentations and lunch, attendees were encouraged to walk over to the Capitol to take the opportunity to meet with their legislators. As always, the committee's objectives are to educate and encourage active participation in the legislative process.

Generally, there seems to exist an air of comity between the branches of government this legislative session. Attorney General Hunter discussed his office's

focus on public safety. One of the bills championed by his office is called "Francine's Law," HB 2640. It is named after Francine Frost, a woman who went missing in Tulsa over 30 years ago. This legislation, if enacted, would require all state agencies to include unidentified remains in a database called the National Missing and Unidentified Persons System (NamUs).

In Ms. Frost's case, her grandson was able to use the public database to eventually locate the previously unidentified remains of his grandmother. AG Hunter also addressed his office's efforts at addressing the backlog of untested rape kits and the need for more funding of diversion programs along with criminal justice reform.

Chief Justice Gurich noted the number of new legislators and discussed the justices' efforts at ensuring they are seen by the legislators as a resource. About 40 judges from across the state participated in an event at the judicial center on Presidents Day during which they also visited the Capitol. She noted personal concerns arising from bills that would realign the Supreme Court and the Court of Criminal Appeals from the current nine districts to five districts, matching the current congressional districts. These bills are SB 973 and HB 2366. Both bills effectively create five districts from

which Supreme Court justices would be selected, in addition to four at-large positions.

Judge Balkman also noted several bills. HB 2612, "the Unity bill," is the bill that creates rules for Oklahoma's medical marijuana industry. SB 300 adds back the limit of 30 requests for production of documents. SB 65 is a family law bill that, in part, will require a judge to provide written findings considered when making a determination on child custody and visitation.

Administrator of the Courts Askins noted her office administers OSCN, including inputting new laws when they go into effect. She asked that when members note mistakes in the system, to please contact her office. She took pride in the fact that their margin of error was less than another national online research tool. Ms. Askins created an excellent PowerPoint presentation on the complicated matter of how the courts collect money and how those collections are then distributed. The short of it is that the judiciary is underfunded. Yearly, they have to take funds from the designated MIS fund to meet payroll. Efforts are in the works to reduce the number of noncourt-related, executive branch agencies being funded through court collections.

Gubernatorial General Counsel Burget started by letting us know

the philosophy of the governor's office is "do the right thing; do the smart thing and use common sense." Agency reform and accountability is the number one priority. Last month the governor signed into law changing the method of obtaining and controlling agency administrators and boards. SB 456, SB 457, HB 2480, HB 2479 and HB 2483 impact the Oklahoma Department of Transportation, Oklahoma Department of Corrections, Oklahoma Health Care Authority, Department of Mental Health and Substance Abuse Services and the Office of Juvenile Affairs. Effectively, the governor will choose the administrator of the agency and some members of the board. The speaker of the House and president pro tem will choose other board members, and the governor will have direct control to hire and fire the chief administrators.

In keeping with his business approach to governing, the governor will work with the agencies to create metrics and goals for improving fiscal outlooks and efficiency. Approval was noted of the bills that would correlate the Supreme Court and Court of Criminal Appeals to the current congressional districts. For future legislation, the governor's office will look at judicial funding and appropriations. Mr. Burget also discussed the Oklahoma Pardon and Parole Board and looking for

methods of increasing the number of inmates who are under supervision after release. It is anticipated that increasing the number of supervised parolees, as opposed to permitting parole waivers, would result in less recidivism – and therefore save money.

Again, the speakers were candid and insightful. I cannot thank them enough for giving their time and energy and participating in the event!

As an update, below is a list of the bills which were addressed

during Reading Day and, as of the writing of this article, are still active bills. You can see each bill's current status by typing in the bill number on the legislative home page at [www.oklegislature.gov](http://www.oklegislature.gov), e.g. "HB1276" or "SB742," and clicking "search." This takes you to the bills "history" page. March 14 was the deadline for bills to be passed out of their house of origin. By April 25, the bill must pass out of the opposite chamber and will then be back in its house of origin for further consideration and vote.



*Administrator of the Courts Jari Askins shares information about funding of the judiciary at Day at the Capitol.*



OBA President Chuck Chesnut (right) visits with Sen. Micheal Bergstrom.

The last day of this session is May 31. Here's a link to the House site that has great information on "How an Idea Becomes a Law" and the legislative process – [www.okhouse.gov/information/CourseOfBills.aspx](http://www.okhouse.gov/information/CourseOfBills.aspx).

As always if you have any suggestions on how to improve the Legislative Monitoring Committee, please let me know.

## UPDATED READING DAY BILLS

### *Family Law*

- HB 1276 Title 43 Child custody; provides court shall provide equal shared parenting time
- HB 2616 Title 43 Creates child support guidelines review committee
- HB 2270 Title 10 Relates to uniform parentage act and limitations of paternity actions
- HB 1274 Title 10A Defines and addresses situational neglect
- HB 2329 Title 10A Pertains to reporting of child abuse or neglect

- HB 2604 Title 10A Pertains to perpetrator registry
  - HB 2189 Title 12 New law allows for alternative methods of providing testimony in criminal cases
  - HB 2091 Title 22 Increases number of members on Domestic Violence Fatality Review Board
- Speaker also listed by reference  
 HB 1061; SB 833; HB 1022; HB 1222; SB 742 and SB 300.

### *Criminal Law*

- HB 1001 Removes weapons prohibition for felons as passenger in vehicle
- HB 1019 Oklahoma criminal discovery code – access to discovery
- HB 1030 Title 37A New law; pertains to alcoholic beverages; allows certain felons to possess an employee's license
- HB 1145 Pertains to expungements
- HB 2019 New law broadens judicial discretion for pregnant women or caregivers

### *Estate Planning/Banking/ General Business*

- SB 732 Title 14A UCC; changes to dollar amounts from Reference Base Index
- SB 123 Title 46 Extends time to six months mortgagor can cure default
- SB 737 Title 18 Similar to above
- SB 204 Title 18 Includes a "natural person" as a "charitable organization"

### *Government Law*

- HJR 1020 Change to Constitution regarding legislative term limits
- HB 1391 Title 74 Pertaining to fingerprinting and background checks
- HB 1921 Title 62 New law; Oklahomans Virtually Everywhere Act
- SB 179 Title 62 Provides for training employees as financial managers
- SB 198 Title 74 New law; guidelines for social media

### *Civil Procedure/Courts*

- HB 1092 Provides for collection of attorney's fees in small claims cases
- SB 779 Pertains to 3009.1; eliminates need to obtain provider's sworn testimony in addition to evidence of payment
- SB 300 Limits production of documents to 30
- HB 1332 Title 47 Allows ATVs to be driven on certain municipal and county roadways

### *Environmental/Natural Resources*

- SB 353 Title 15 New law addressing "design professional services agreement"
- SB 542 Title 29 New law relating to Wildlife Conservation Code, requiring education program
- SB 702 Title 27A New law requiring DEQ and Water Resources Board to share information in certain circumstances
- HB 1403 Title 82 New law pertaining to "treasured stream"
- HB 2474 Title 82 Disclosure and website of applications to Oklahoma Water Resources Board

SB 568 Title 82 Creates phase 2 Arbuckle – Simpson Hydrology Study Revolving Fund

### *Schools*

HB 1065 Modifies definition of threatening behavior

SB 441 Pertains to length of school year

SB 698 Title 61 Public Facilities Act; eliminates certain criteria

### *Indian/Real Estate Law*

HB 1916 Title 60 New law prohibiting transfers of certain items of tangible personal property to public trust

HB 1220 Title 16 False affidavit shall result in award of costs and attorney

HB 1222 Title 16 Provides for effective conveyances by married grantors

HB 1223 Title 16 Pertains to claims and purchases of mineral interests

HB 2121 Title 60 Provides for notice relating to Uniform Unclaimed Property Act

SB 915 Title 16 Relates to remote online notarial acts

Also provided an update to the Stigler Act amendments in the lawsuit, *Carpenter v. Murphy*

### *Marijuana Law*

HB 1100 Modifies certain prohibited acts. Relates to Uniform Controlled Dangerous Substances Act

SB 305 Pertains to discrimination against medical marijuana license holders

SB 307 Relates to tax on retail medical marijuana sales

SB 755 New law pertaining to advertising

SB 756 Relates to packaging and providing restrictions and requirements

SB 759 Provides for limitations to physicians and prohibitions for taking certain actions

SB 763 Pertains to allowing physicians to set certain limits

SB 765 Title 21 Relates to prohibitions on smoking and adding marijuana

SB 898 Pertains to dispensaries checking certain information at point of sale

SB 882 New law directs Bureau of Narcotics to develop and implement program for disposal of medical marijuana waste

SB 532 Title 12 Relates to foreclosure of medical marijuana businesses

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Ms. Ailles Bahm is the managing attorney of State Farm's in-house office and serves as the Legislative Monitoring Committee chairperson. She can be contacted through Communities or [angela.ailles-bahm.ga2e@statefarm.com](mailto:angela.ailles-bahm.ga2e@statefarm.com).

## NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

### Justice of the Supreme Court District One

The vacancy will be created by the retirement of the Honorable John F. Reif effective April 30, 2019.

*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, as opposed to a registered voter, for one year immediately prior to his or her appointment, and additionally, must 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 on line at [www.oscn.net](http://www.oscn.net), click on Programs, then Judicial Nominating Commission or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the Commission at the address below **no later than 5:00 p.m., Friday, April 26, 2019. If applications are mailed, they must be postmarked by midnight, April 26, 2019.**

Mike Mordy, Chairman  
Oklahoma Judicial Nominating Commission  
Administrative Office of the Courts  
2100 N. Lincoln Blvd., Suite 3  
Oklahoma City, Oklahoma 73105

# Mock Trial: Fictional Case Requires Students to Develop Real-World Skills

*By Kevin H. Cunningham*



**O**N TUESDAY EVENING, March 5, the top two high school mock trial teams met for the final round of competition to determine the state winner. For the second consecutive year, the final teams were from the same high school. The 2019 Oklahoma High School Mock Trial Program final round was won by Owasso Team Quadstone after defeating Owasso Team Heisenberg. The Quadstone team will now represent the state of Oklahoma at the National High School Mock Trial Championship in Athens, Georgia, this May.

The winning team is comprised of competitors Jesse Anderson, Hayley Campbell, Melody Carney, Kelli Casteel, Emma Donohue, Avery Hendel, Ciara Locker, Maggie Murphy and Cole Wyrick. Attorney coaches for the team are Judge Daman Cantrell and Ken Underwood. The teacher coach is Kathy Rutherford. While the case at issue was a work of fiction, the competitors developed real-world skills and talent to prevail.

**Facing page:** *Finals judges were from left Judge Jane Wiseman, Judge Jodie Jayne, Judge Shon Erwin, Retired Judge Edward Cunningham, Judge Paul Cleary and Judge Dana Rasure.*

This year the case at issue dealt with a civil claim for wrongful death of a high school student due to alleged bullying. A surviving family member brought the suit against the defendant – a fellow student accused of engaging in bullying during school hours as well as after school hours. The bullying included in-person statements, statements made online and through direct electronic communication. The case involved a difficult topic that is unfortunately all-too-common in today's society.

Competitors were tasked with preparing both sides of the matter and then prosecuting and defending the claims alleged during multiple rounds of competition.

This case provided a unique opportunity for participants to consider how conduct that occurs too often can affect so many people, directly and indirectly. The students had to analyze the subject matter from the family's perspective, the school's perspective and the defendant's perspective. Students had to filter through

information that was not important or relevant to reach the facts needed to present each side of the controversy. The ability to critically think through an issue from multiple perspectives is a life-long skill that will serve the competitors throughout their futures.

More than 40 teams from 27 schools located across the entire state participated in the competition. While many high school sports in this state are divided into districts based on the relative size of the school, the mock trial program allows a home school program to field a team against the largest school district in Oklahoma. Much like the equal treatment given to all persons



*Mock Trial Committee members staffing the final round were, from left, Orion Strand, Brittany Hayes, Coordinator Judy Spencer, Andrea Medley and Todd Murray.*



*Coached by Judge Daman Cantrell and attorney Ken Underwood along with teacher Kathy Rutherford, Owasso High School Team Quadstone celebrates its championship win.*



*A new addition to the program this year is the Best Courtroom Artist Award, which was won by Bokoshe High School senior Chloe Carver.*

and entities within the courtroom walls of a real-life trial, the competitors are treated as equals during the mock trial competition. Experiencing how the legal system seeks to treat all equally will hopefully develop an appreciation for one of the foundations on which our country is built – a fair and impartial court system.

A new component to the program was added this year – best courtroom artist. Contestants were given one hour while a mock trial was underway to complete their drawing. Artists were judged on how their drawing told the story of the event taking place, composition, color/contrast and authenticity in conveying a professional feeling.

Presiding judge for the final round was Retired Judge Edward Cunningham, who has been involved with the competition since 1982. Scoring panelists were Judge Jane Wiseman, Judge Paul Cleary, Judge Shon Erwin, Judge Dana Rasure and Judge Jodi Jayne. Each of the scoring panelists is a current sitting judge and the panel, collectively, possesses decades of experience and involvement with the mock trial program. In fact, Judges Jane Wiseman and Dana Rasure were involved in the creation of the competition.

This program would not exist without the work of hundreds of volunteers. Each year, over 400 judges and attorneys donate time to work with mock trial teams directly, to score and judge the teams throughout the competition, and, as members of the Mock Trial Committee, to plan, prepare, write, conduct and oversee the competition.

The Oklahoma Bar Foundation is the principal financial supporter of this competition and without their generosity, the generational impact this program has developed since inception simply would not exist. Thank you on behalf of the committee and all involved for supporting the 2019 Oklahoma High School Mock Trial Program.

## **ABOUT THE AUTHOR**

Kevin Cunningham practices in Mustang and serves as chairperson of the Oklahoma High School Mock Trial Committee.

## **TRIAL SITE COORDINATORS**

Andrea Medley\*\*\*\*  
 Michael Nesser\*\*  
 Brittany Hayes  
 Lydia Anderson Fields\*\*  
 Kevin Cunningham\*\*  
 Deresa Gray\*\*  
 Kathryn Walker  
 Pat Layden  
 April McClure  
 Leah Terrill-NesSmith  
 Carolyn Thompson\*\*  
 Melissa Peros  
 Todd Murray  
 Anne Mize\*\*

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 Nick Atwood  
 Judge Luke Barteaux\*  
 Jerry Bass  
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Kevin Cunningham  
Retired Judge Edward  
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Allyson Dow  
Blake Dutcher  
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Clay Hillis  
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Bob Speed  
Laura Thomas  
Carolyn Thompson  
Ken Underwood  
Kyle Wasson  
Judge Jill Weedon

\* Denotes multiple times

# Judicial Nominating Commission Elections: Nomination Period Opens

**T**HE SELECTION OF qualified persons for appointment to the judiciary is of the utmost importance to the administration of justice in this state. Since the adoption of Article 7-B to the Oklahoma Constitution in 1967, there has been significant improvement in the quality of the appointments to the bench. Originally, the Judicial Nominating Commission was involved in the nomination of justices of the Supreme Court and judges of the Court of Criminal Appeals. Since the adoption of the amendment, the Legislature added the requirement that vacancies in all judgeships, appellate and trial, be filled by appointment of the governor from nominees submitted by the Judicial Nominating Commission.

The commission is composed of 15 members. There are six non-lawyers appointed by the governor, six lawyers elected by members of the bar, and three at large members, one selected by the Speaker of the House of Representatives; one selected by the President Pro Tempore of the Senate; and one selected by not less than eight members of the commission. All serve six-year terms, except the members at large who serve two-year terms. Members may not succeed themselves on the commission.

The lawyer members are elected from each of the six congressional

districts as they existed in 1967. (As you know, the congressional districts were redrawn in 2011.) Elections are held each odd-numbered year for members from two districts.

## 2019 ELECTIONS

This year there will be elections for members in Districts 3 and 4. District 3 is composed of 22 counties in the south and southeastern part of the state. District 4 is composed of 12 counties in the central and the southwestern part of the state, plus a portion of eastern Oklahoma County. (See the sidebar for the complete list.)

Lawyers desiring to be candidates for the Judicial Nominating Commission positions have until Friday, May 17, 2019, at 5 p.m. to submit their Nominating Petitions. Members can download petition forms at [www.okbar.org/jnc](http://www.okbar.org/jnc). Ballots will be mailed on June 7, 2019, and must be returned by June 21, 2019, at 5 p.m.

It is important to the administration of justice that the OBA members in the Third and Fourth Congressional Districts become informed on the candidates for the Judicial Nominating Commission and cast their vote. The framers of the constitutional amendment entrusted to the lawyers the responsibility of electing qualified people to serve on the commission.

## OBA PROCEDURES GOVERNING THE ELECTION OF LAWYER MEMBERS TO THE JUDICIAL NOMINATING COMMISSION

1. Article 7-B, Section 3, of the Oklahoma Constitution requires elections be held in each odd numbered year by active members of the Oklahoma Bar Association to elect two members of the Judicial Nominating Commission for six-year terms from Congressional Districts as such districts existed at the date of adoption of Article 7-B of the Oklahoma Constitution (1967).

2. Ten (10) active members of the association, within the Congressional District from which a member of the commission is to be elected, shall file with the Executive Director a signed petition (which may be in parts) nominating a candidate for the commission; or, one or more County Bar Associations within said Congressional District may file with the Executive Director a nominating resolution nominating such a candidate for the commission.

3. Nominating petitions must be received at the Bar Center by 5 p.m. on the third Friday in May.

4. All candidates shall be advised of their nominations, and unless they indicate they do not desire to serve on the commission, their name shall be placed on the ballot.

5. If no candidates are nominated for any Congressional District, the

Board of Governors shall select at least two candidates to stand for election to such office.

6. Under the supervision of the Executive Director, or his designee, ballots shall be mailed to every active member of the association in the respective Congressional District on the first Friday in June, and all ballots must be received at the Bar Center by 5 p.m. on the third Friday in June.

7. Under the supervision of the Executive Director, or his designee, the ballots shall be opened, tabulated and certified at 9 a.m. on the Monday following the third Friday of June.

8. Unless one candidate receives at least 40 percent of the votes cast, there shall be a runoff election between the two candidates receiving the highest number of votes.

9. In case a runoff election is necessary in any Congressional District, runoff ballots shall be mailed, under the supervision of the Executive Director, or his designee, to every active member of the association therein on the fourth Friday in June, and all runoff ballots must be received at the Bar Center by 5 p.m. on the third Friday in July.

10. Under the supervision of the Executive Director, or his designee, the runoff ballots shall be opened,

tabulated and certified at 9 a.m. on the Monday following the third Friday in July.

11. Those elected shall be immediately notified, and their function certified to the Secretary of State by the President of the Oklahoma Bar Association, attested by the Executive Director.

12. The Executive Director, or his designee, shall take possession of and destroy any ballots printed and unused.

13. The election procedures, with the specific dates included, shall be published in the *Oklahoma Bar Journal* in the three issues immediately preceding the date for filing nominating resolutions.

# NOTICE

## Judicial Nominating Commission Elections Congressional Districts 3 And 4

Nominations for election as members of the Judicial Nominating Commission from Congressional Districts 3 and 4 (as they existed in 1967) will be accepted by the Executive Director until 5 p.m., Friday, May 17, 2019. Ballots will be mailed June 7, 2019, and must be returned by 5 p.m. on June 21, 2019.



### District No. 3

Atoka  
Bryan  
Carter  
Choctaw  
Coal  
Cotton  
Garvin  
Haskell  
Hughes  
Jefferson  
Johnston  
Latimer  
LeFlore  
Love  
Marshall  
McCurtain  
Murray  
Pittsburg  
Pontotoc  
Pushmataha  
Seminole  
Stephens

### District No. 4

Caddo  
Cleveland  
Comanche  
Grady  
Greer  
Harmon  
Jackson  
Kiowa  
McClain  
Oklahoma (Part)\*  
Pottawatomie  
Tillman  
Washita

\*Part of Oklahoma County

### Including:

Choctaw  
Harrah  
Luther  
Midwest City  
Newalla  
Nicoma Park  
Spencer  
South of 89<sup>th</sup> Street

# Millennials

By John Morris Williams

**MILLENNIALS**, or Generation Y, as most probably know refers to a birth occurrence group. Although there are no exact dates attributed to the group, most generally it is those persons born around 1980 to 1996. This is a generation for which cable television, cellphones, computers and a 24-hour news cycle are the norm. So, it is not surprising that mode and speed of communications for this group is inherently different than prior generations. In a way, everything will change, and everything will stay the same.

I recently attended a CLE we offered here at the OBA that focused on generational issues. It was an informative program. My main objective in attending was to gain insight on how best to communicate with post-baby boomer generations. Not surprising was the data that shows millennials very much live in an online world.

A recent article referencing the American Bar Association Techshow quoted a speaker who said that in 10 years 75 percent of all law office staff will be millennials. That is not surprising. It is a big group, and they are quickly coming of age. They are approximately 22 to 38 years of age currently.

For what is referred to as “big law” (mega firms), this should be an interesting time. Millennials tend to be more diverse and mobile. As baby boomers experienced the decline of employer/employee loyalty in terms of career longevity, millennials entered the work force without any

expectations of staying in a job for 30 years, getting a gold watch and a pension. It will be interesting to see how equity and partnership tracks develop in a much more lateral moving group.

Why should this be of interest to Oklahoma lawyers – the majority of whom are closer to 60 than 50? I believe the first reason is that if you intend on practicing law in the next 10 years, you need to be ready for some big changes. Millennials, I believe, will push systems that are not online to get online. They will employ tools such as virtual reality in

I believe the second reason one should pay attention is because the rules of marketing and competition are going to take the online world up several notches. It’s not just our profession, but the whole world will experience continued changes as millennials become the predominate group in the work force. Millennials look online for just about everything. Those ratings and comments you often see attributable to online goods or services means a lot more to them than most baby boomers. By the way, there are

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It will be incumbent for the next generation of lawyers to educate the public on obtaining competent legal services in an online world. That will turn out to be perhaps some of the most important work bar associations of the future will perform.

exhibits and use artificial intelligence and other logic models to become very adroit at predicting outcomes in litigation. You may not see much of them physically, but they will digitize your world in a significant way.

some ethical traps to responding to bad reviews and comments. If you thought it was bad enough to have to master social media, now you must master the ethics of defending your online reputation.

Lastly, as I have said before, the methods of obtaining legal services by millennial clients will continue to change significantly. Online legal service providers who have a high search engine ranking and good reviews will attract business. Unlicensed offshore providers who are a bit crafty will work hard to create an illusion of being local and reputable. It will be incumbent for the next generation of lawyers to educate the public on obtaining competent legal services in an online world. That will turn out to be perhaps some of the most important work bar associations of the future will perform. The good news is that millennial lawyers have all the skill sets to meet the challenges of their generation. This holds true not only on the delivery end, but also on the public protection side.

As I watch the next generation of lawyer leaders emerge, I am convinced we are in good hands. They work and think a bit differently, but they strive just like generations of lawyers before them to try to help people and to make a difference in peoples' lives. Everything will change. Everything will stay the same.

*John M. Williams*

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To contact Executive Director Williams, email him at [johnw@okbar.org](mailto:johnw@okbar.org).



# Don't Become the Victim of a Wire Fraud Scheme

By Jim Calloway

**WHEN I WAS IN LAW** school, a cashier's check was deemed to be just as good as cash because it was guaranteed by the bank. While that is still technically and legally true today, the question is whether you are holding a valid cashier's check. Criminals now have the ability to create forged cashier's checks that are indistinguishable from the real thing, with holograms and watermarks and often drawn on a legitimate bank account. Hopefully everyone in the legal community now understands that depositing a cashier's check and then wiring money out against the check a few days later is an extremely risky practice.

Recently we received reports of increasingly sophisticated wire fraud schemes directed at Oklahoma lawyers. My advice to you is that in the same way you now have to be suspicious of a cashier's check, you have to be extremely cautious, double and triple checking, anytime you are wiring money today.

## RECENT FRAUDULENT SCHEMES

Just a few months ago, a lawyer reported to us that his banker had saved him from being defrauded. He emailed the banker wiring instructions for a sum of money. He believes that someone intercepted his email, altered the

wiring instructions and sent the email along to the banker. When the banker received the email, it all looked legitimate, but the banker spotted the suspicious wiring instructions and contacted the lawyer. No money was lost.

Even more recently, a fraudster had quite a long email exchange with the office manager in an Oklahoma law firm while posing as a senior lawyer. The emails appeared to be from the lawyer's account. At first, the "lawyer" asked a few questions about wiring since they hadn't done it recently, which succeeded in convincing the staff person she was corresponding with the lawyer. The fraudster had somehow obtained an actual client's name to mention in the emails. Luckily, the first attempt was to convince the office manager to wire out far more than the trust account total balance. Then, when an email suggested wiring out a large amount that would've involved the deposits of several clients with an explanation of "Don't worry. I'm bringing a big check in to deposit tomorrow to cover everything," the staff person recognized that was never something the lawyer would say or do and called the lawyer's cellphone.

The lesson here seems simple to me. You should never use plain, unencrypted email to deliver wiring instructions. Email is not

secure. This is not a secure method of handling your business.

According to the Oklahoma Bankers Association, the typical situation is not someone intercepting an email and altering it, movie hacker style.<sup>1</sup> It is normally that the bad guy is already inside the victim's computer system. Sometimes they wait for weeks or months reading all of your email traffic until they find a potential target.

One way that could happen is a breach of your Office 365 when you are tricked into giving your username and password to an evil doer who sends you a fake 365 login screen. Many of us who have switched to Office 365 have seen the login screen pop up at odd times. If a fraudster can convince you it is a valid Office 365 login screen and you "login," then he will have everything needed to access all of your Outlook email, your OneDrive and other Office 365 tools on an ongoing basis.

So how do you keep from becoming a victim?

As I noted in the March 2019 *Oklahoma Bar Journal* article "Two-Factor Authentication is Critical Today," two-factor authentication will limit many risks.

A telephone call can also serve as a good security measure. Generally, the process a banker follows for wiring money involves confirmation with a telephone call

before wiring any money. Don't hesitate to also confirm this with a phone call yourself.

For the law office, a good policy is to explain to everyone they should never wire out any money until they have received voice telephone confirmation from the lawyer in charge whose voice they recognize. All of the frantic emails about how the deadline is today

and the lawyer is tied up in court should be ignored until they hear the lawyer's voice.

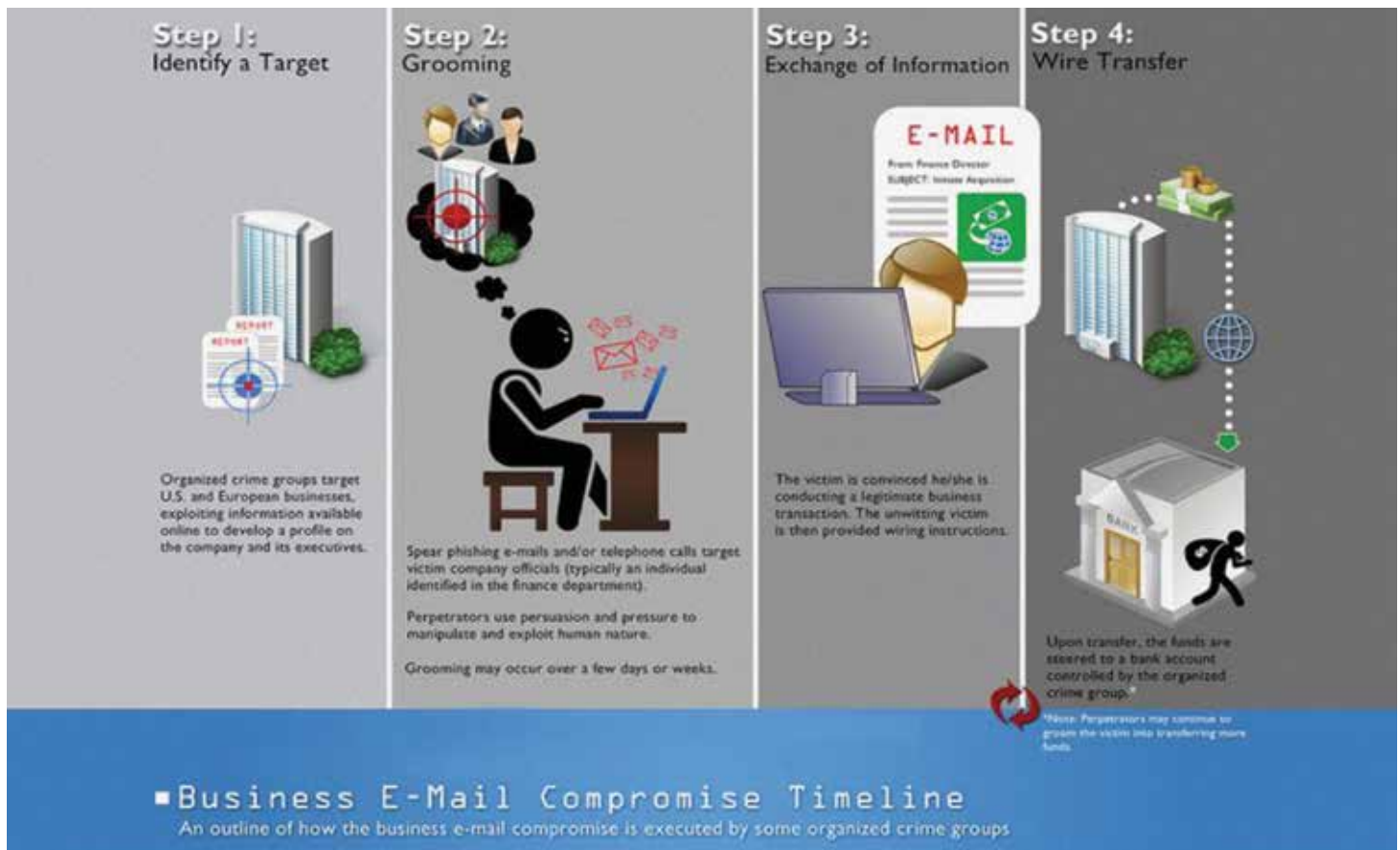
Sometimes a phone call is your best solution to a problem.

If you are concerned your law office network has been compromised, change all of the passwords (including Office 365) and consider using two-factor authentication.

Mr. Calloway is 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, jimc@okbar.org. It's a free member benefit!

**ENDNOTE**

1. This is called a man-in-middle attack. [en.wikipedia.org/wiki/Man-in-the-middle\\_attack](https://en.wikipedia.org/wiki/Man-in-the-middle_attack).



Graphic Source: <https://www.fbi.gov/news/stories/business-e-mail-compromise-on-the-rise>

# The No Contact Rule

By Joe Balkenbush

**WE ARE ALL FAMILIAR** with the prohibition against contacting an opposing party when they are known to be represented by counsel. This tenet of the law is commonly known as the “no contact” rule.

Rule 4.2 of the Oklahoma Rules of Professional Conduct is the legal authority for the “no contact” rule.<sup>1</sup> It states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

A literal reading of the rule seems pretty straightforward. However, there are many twists and turns which may be encountered when trying to apply the rule to the facts of the case. If a business is involved, does it include just the “hierarchy” of the business, or does it include all employees? Does it include former employees? What if someone calls and wants a “second opinion”?

## A SECOND OPINION

Let’s consider the last question first. An attorney is out in public and runs into a friend or acquaintance who, knowing you are an attorney, says “let me ask you a question.” They proceed to

tell you the facts of their case and their legal issue. They tell you their attorney has advised they do x, y and z. Is it permissible for you to provide them with your legal opinion or advice regarding application of the relevant law to the facts of their case? The answer is yes, so long as you are not representing another party in the same matter. Comment 4 to Rule 4.2 states:

## EMPLOYEES OF A BUSINESS

Next question – if the business is involved in litigation, is it permissible to speak to employees of the business? The answer to this question is one that we lawyers are particularly fond of using – “it depends.” Comment 7 to Rule 4.2 provides the answer:

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A literal reading of the rule seems pretty straightforward. However, there are many twists and turns which may be encountered when trying to apply the rule to the facts of the case.

... Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter.

The key element in this analysis is that you don’t represent another party to the litigation. By simply asking a couple of preliminary questions, a lawyer can ensure they are not involved in the case.

[7] In the case of a represented organization, this rule prohibits communications with a constituent of the organization *who supervises, directs or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability* (emphasis added)...



So, a plain reading of the comment to the rule teaches us that unless the employee (constituent) is in a supervisory capacity, directs or regularly consults with legal counsel for the organization, has the authority to obligate the organization or whose act or omission in the matter is imputed to the organization, then it is permissible to speak with that employee without consent or knowledge of counsel.

OBA members who call frequently say that counsel for the organization said they represent all employees. Well, they most likely do not. The rule is clear. Absent some extraordinary circumstances, the assertion of a “blanket representation” of all employees of the organization is impermissible.

### FORMER EMPLOYEES OF A BUSINESS

Next question – is it permissible to speak with former employees of the business? The answer is yes, even if they were previously in a supervisory, managerial or authoritative role with the business. The last sentence of Comment 7 provides:

[7] ...Consent of the organization’s lawyer is not required for communication with a former constituent ...

The only caveat is if the former employee is represented by independent counsel, then of course the “no contact” rule is applicable.

Bottom line, the “no contact” rule is still alive and well.

### CONCLUSION

As always, it is essential that you have a thorough understanding and knowledge of the Oklahoma Rules of Professional Conduct. A lawyer with less than honorable intent might take advantage of you, and thus your client, if you aren’t familiar with the rules.

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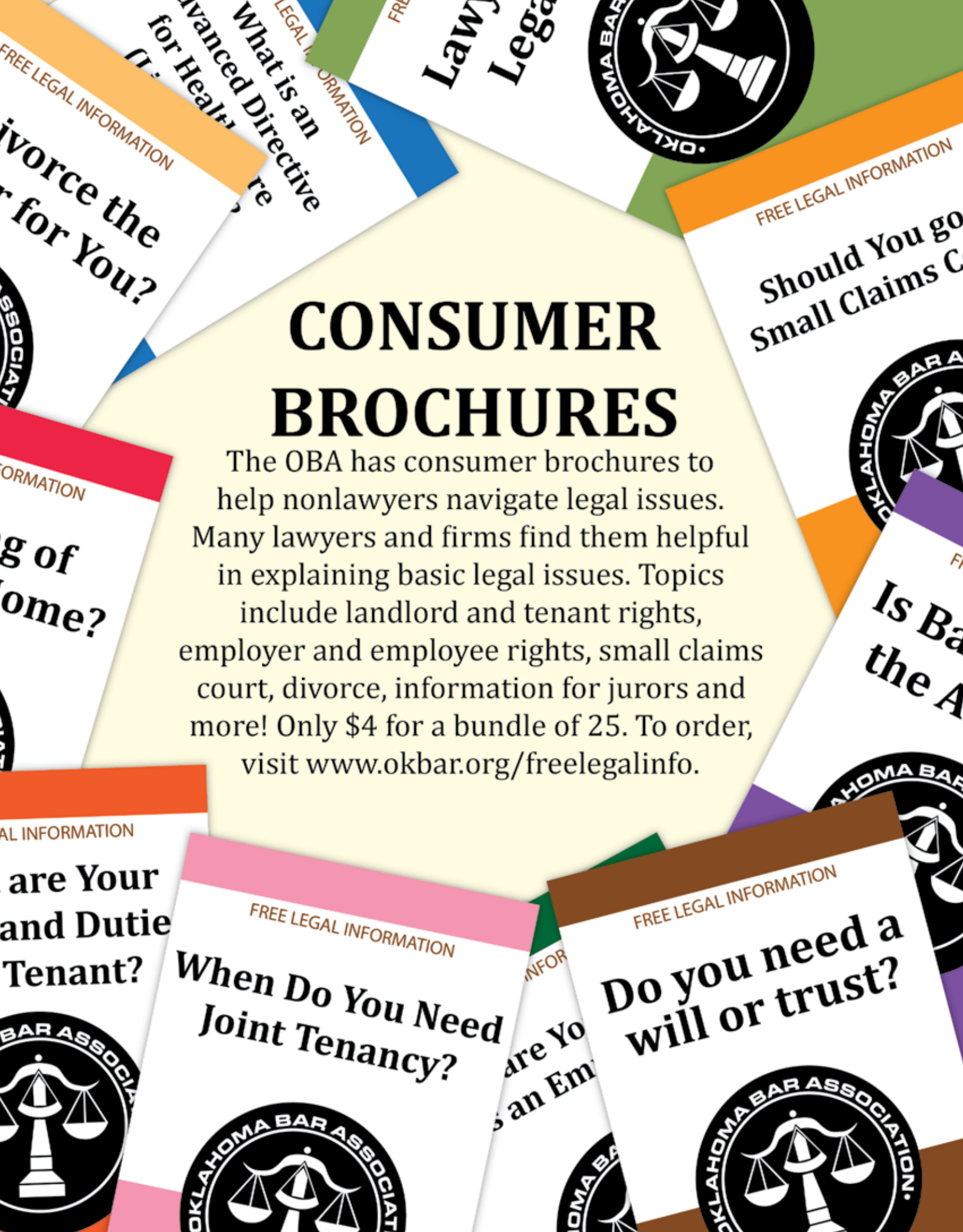
Joe Balkenbush is OBA Ethics Counsel. Have an ethics question? It’s a member benefit and all inquiries are confidential. Contact him at [ethicscounsel@okbar.org](mailto:ethicscounsel@okbar.org) or 405-416-7055; 800-522-8065.

### ENDNOTE

1. Title 5 O.S. Appendix 3-A, Rule 4.2.

# CONSUMER BROCHURES

The OBA has consumer brochures to help nonlawyers navigate legal issues. Many lawyers and firms find them helpful in explaining basic legal issues. Topics include landlord and tenant rights, employer and employee rights, small claims court, divorce, information for jurors and more! Only \$4 for a bundle of 25. To order, visit [www.okbar.org/freelegalinfo](http://www.okbar.org/freelegalinfo).



## Meeting Summaries

*The Oklahoma Bar Association Board of Governors met Thursday, Jan. 17, at the Oklahoma Bar Center in Oklahoma City.*

### REPORT OF THE PRESIDENT

President Chesnut reported he spoke to the Garfield County Bar Association in Enid. He attended the swearing-in for judges in the Northeast Judicial Administrative District at Bartlesville and OBA CLE Task Force meeting. He wrote the February president's message and worked on finalizing all OBA committee appointments.

### REPORT OF THE VICE PRESIDENT

Vice President Neal reported he attended board meetings for United Way of Central Oklahoma and Arts Council OKC.

### REPORT OF THE PRESIDENT-ELECT

President-Elect Shields reported she attended the swearing-in ceremony for Supreme Court Chief Justice Gurich and Vice Chief Justice Wyrick and the OBA CLE Task Force meeting.

### REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended Legislative Monitoring Committee meetings, YLD board meeting and outgoing chair event, planning meetings for the CLE Task Force, CLE Task Force meeting and swearing-in of Supreme Court Chief Justice Gurich. He also spoke at a small

group meeting of the Downtown Rotary Club.

### REPORT OF THE PAST PRESIDENT

Past President Hays reported she attended the Tulsa County Bar Association holiday open house, retirement celebration for Tulsa County Judge Fitzgerald and Judge Fransein, OBA Family Law Section Exec Committee planning meeting, Women in Law Committee meeting and swearing-in ceremonies for Judge Linda Thomas and the Northeast Judicial Administrative District.

### BOARD MEMBER REPORTS

**Governor Beese** reported he attended the retirement reception for District Judge Tom Alford, Muskogee County Bar Association Christmas party, 15th Judicial District swearing in for District Judge Bret Smith and OBA CLE Task Force meeting. **Governor DeClerck** reported he attended the Garfield County Bar Association Christmas party.

**Governor Fields** reported he attended the Legislative Monitoring Committee meeting and Associate District Judge Brendon Bridges swearing-in ceremony. **Governor Hermanson** reported he presided over two District Attorneys Council meetings, presided over two Oklahoma District Attorneys Association board meetings, conducted two District Attorneys Council Executive Board meetings and was sworn in to a new term as 8th District Attorney for the

state of Oklahoma. He attended the swearing-in ceremony of the 8th Judicial District judges, swearing-in ceremony of Oklahoma Gov. Stitt and the other statewide elected officials and the funeral of attorney Dave Jacobs. **Governor Hutter** reported he attended the Solo & Small Firm Conference Planning Committee meeting and Bench and Bar Committee meeting. **Governor McKenzie** reported he attended the Solo & Small Firm Conference Planning Committee meeting. **Governor Morton** reported he attended two Legislative Monitoring Committee meetings and the William J. Holloway Inn of Court meeting. **Governor Oliver** reported he attended the Payne County Bar Association meeting, swearing in for the Northeast Judicial Administrative District and OBA CLE Task Force meeting. **Governor Pringle** reported he attended two Legislative Monitoring Committee meetings and the Oklahoma County Bar Association *Briefcase* Committee meeting. **Governor Williams** reported he attended the Tulsa County Bar Association's Energy and Mineral Law Section December meeting, judicial oath ceremony for the Northeast Judicial Administrative District, Council Oak Johnson Sontag Inn of Court Pupilage Group VI meeting and the OBA's CLE Task Force meeting.

## REPORT OF THE YOUNG LAWYERS DIVISION

Governor Nowakowski reported she held the orientation for newly elected YLD board members and chaired the division's first monthly meeting. She said they had a great turnout for the event to honor past chair Nathan Richter at TopGolf.

## REPORT OF THE SUPREME COURT LIAISON

Justice Edmondson reported the Supreme Court approved the recommended changes on judicial complaints. He said the court decided to table the House of Delegates resolution regarding an amendment to the Oklahoma Rules of Professional Conduct adding a limited exception for lawyers providing counsel to clients regarding Oklahoma marijuana-related laws to allow more time to review correspondence received on the issue.

## BOARD LIAISON REPORTS

Governor Pringle said the **Legislative Monitoring Committee** has met twice to prepare for Reading Day, and he reviewed the agenda. He said plans are also being made for Day at the Capitol on March 12. Past President Hays said the **Women in Law Committee** organized a social activity to see the recent movie about Justice Ruth Bader Ginsburg. Oct. 4 is the tentative date for their annual conference, and they have a speaker in mind. Management Assistance Program Director Calloway said the **Solo & Small Firm Conference Planning Committee** has 50-60 percent of the conference planned. He said all conference registration fees were increased by \$25. Governor Hutter said the **Bench and Bar Committee** discussed 1) its strategy on how to increase public awareness of the VPO video, 2) creating a Spanish version of the VPO video and 3) creating a civic group presentation on unbundled legal services.

## REPORT OF THE GENERAL COUNSEL

General Counsel Gina Hendryx briefed new board members on the status of pending litigation involving the OBA and/or its employees. *Bednar v. Hammond, et.al.* is pending in Oklahoma County and currently assigned to Judge Hesse in Canadian County. She said the OBA's motions to dismiss will be heard on Feb. 1. The OBA is also a nominal defendant in two matters that are currently on appeal, and the OBA has responded to the petitions in error in those cases. A written report of PRC actions and OBA disciplinary matters for December was submitted to the board for its review.

## PERSONNEL MANUAL POLICY AMENDMENT

Executive Director Williams briefed the board on the current policy on closing the office during inclement weather that relies on state government's notification, and he shared the recent experience of delayed government notification that resulted in confusion. The board approved amending the policy.

## COURT ON JUDICIARY APPOINTMENTS

The board approved President Chesnut's reappointment of O. Chris Meyers, Lawton, to the Appellate Division. The term will expire 3/1/2021. The board approved President Chesnut's reappointment of William Brad Heckenkemper, Tulsa, to the Trial Division. The term will expire 3/1/2021.

## NEW OBA EMPLOYEE

MAP Director Calloway introduced Julie Bays, the OBA's new practice management advisor who previously worked for the Office of the Attorney General.

## NEW MEMBER BENEFITS

MAP Director Calloway reported the OBA Member Services Committee approved two services that will be offered to OBA members at discounted prices. He explained Casetext is a legal research tool that uses artificial intelligence technology to search for cases faster, and Kurent is a cloud-based billing service that tracks time, creates and sends invoices, manages trust accounts and receives payments.

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## COMMITTEE LEADERSHIP AND BOARD OF GOVERNORS LIAISON APPOINTMENTS

President Chesnut shared a list of committee chairpersons, vice chairpersons and Board of Governors members assigned to serve as committee liaison.

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*The Oklahoma Bar Association Board of Governors met Friday, Feb. 22, at the Oklahoma Bar Center in Oklahoma City.*

## REPORT OF THE PRESIDENT

President Chesnut reported he attended the OBA swearing-in ceremony, has-been party, OBA Legislative Reading Day and Ottawa County Bar Association meeting. In Las Vegas, he attended the Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting events, Oklahoma ABA delegation dinner, Fastcase dinner, ABA Midyear Meeting and ABA House of Delegates. He also worked on appointments to the National Conference of Commissioners for Uniform State Laws.

## REPORT OF THE VICE PRESIDENT

Vice President Neal reported he attended the has-been party, OBA swearing-in ceremony, Oklahoma County Bar Association Young Lawyers Division Chili Cook-off and OBA Legislative Reading Day.

## REPORT OF THE PRESIDENT-ELECT

President-Elect Shields reported she attended the OBA swearing-in ceremony, has-been party, Oklahoma Bar Foundation Board of Trustees meeting and OBA Legislative Reading Day. In Las Vegas, she attended the Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting events,

Oklahoma ABA delegation dinner, Fastcase dinner, ABA Midyear Meeting and ABA House of Delegates.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the has-been event, swearing in of new officers and governors, National Association of Bar Executives meeting, National Conference of Bar Presidents meeting, Southern Conference of Bar Presidents meeting, Fastcase dinner, Legislative Reading Day and Legislative Monitoring Committee meeting.

## REPORT OF THE PAST PRESIDENT

Past President Hays reported she attended the OBA swearing-in ceremony, has-been party, Women in Law Committee meeting, Professionalism Committee meeting, OBA Awards Committee meeting, OBA Family Law Section monthly meeting/CLE and OBA FLS leadership retreat. In Las Vegas, she attended the Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting events, Oklahoma ABA delegation dinner, Fastcase dinner, ABA Midyear Meeting and ABA House of Delegates.

## BOARD MEMBER REPORTS

**Governor Beese** reported he attended the OBA swearing-in ceremony, has-been party, Muskogee County Bar Association meeting, OBA CLE Task Force meeting and OBA High School Mock Trial competition. **Governor DeClerck** reported he attended the Garfield County Bar Association's Legislative Committee meeting, county bar meeting and OBA Communications Committee meeting. **Governor Fields** reported he attended the Board of Governors has-been

party, OBA swearing-in ceremony, Pittsburg County Bar Association meeting, OBA High School Mock Trial Program competition and OBA Professionalism Committee meeting via phone. **Governor Hermanson** reported he attended the OBA has-been dinner, OBA swearing-in ceremony at the Supreme Court, funeral of OBA member John Gardner, Oklahoma Criminal Justice Forum at the Oklahoma History Center, individual meetings with Oklahoma's federal senators and representatives in Washington D.C., OBA Law Day Committee meeting via phone, swearing-in ceremony of Judge Wilkie, Oklahoma district attorneys reception for Oklahoma legislators at Packard's, Oklahoma State Chamber reception for state legislators at the Oklahoma History Center and District Attorneys Council Executive Committee meeting. He was interviewed for "The Hot Seat," "Mitchell Talks" and a podcast dealing with Oklahoma legislative issues and presided over meetings of the Oklahoma District Attorneys Council and Oklahoma District Attorneys Association. **Governor Hicks** reported he attended the OBA swearing-in ceremony, has-been party, National Conference of Bar Foundations meeting, Metropolitan Bar Caucus dinner meeting, Tulsa County Bar Foundation meeting, Access to Justice Committee meeting and Tulsa County Bar Association board meeting. **Governor Hutter** reported he attended the OBA swearing-in ceremony, has-been party, Oklahoma County judicial swearing in and Solo & Small Firm Conference Planning Committee meeting. **Governor McKenzie** reported he attended two Pottawattamie County Bar Association meetings, teaching an hour of CLE at one, and the Legal Internship Committee meeting.

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MAP Director Calloway, a staff liaison to the committee, mentioned a pro se docket created in Oklahoma County is seeking volunteer lawyers, and committee members are going to work with JusticeCorps to set up a program utilizing undergraduate students who don't give legal advice but serve as courthouse navigators.

**Governor Morton** reported he attended the OBA has-been dinner, OBA swearing-in ceremony, OBA Legislative Reading Day, Cleveland County Bar Association meeting, OBA Legislative Monitoring Committee meeting and William J. Holloway Inn of Court meeting. **Governor Oliver** reported he attended the Payne County Bar Association meeting, has-been party and Lawyers Helping Lawyers Assistance Program meeting via telephone. **Governor Pringle** reported he attended the OBA has-been dinner, OBA swearing-in ceremony, OBA Legislative Reading Day, OCBA *Briefcase* Committee meeting, Oklahoma County Bar Association meeting and Legislative Monitoring Committee meeting. **Governor Will** reported he attended the Oklahoma County judicial swearing-in ceremonies and receptions in addition to handling follow up on the Bar Center Facilities Committee. **Governor Williams** reported he attended the OBA swearing-in ceremony, Board of Governors has-been party, Tulsa County Bar Foundation Board of Directors meeting, Council

Oak Johnson Sontag Inn of Court Pupilage Group VI meeting, OBA Diversity Committee meeting, OBA Estate Planning, Probate and Trust Section meeting to discuss the CLE Task Force and Tulsa County Bar Association Board of Directors meeting.

#### REPORT OF THE YOUNG LAWYERS DIVISION

Governor Nowakowski reported she attended the Board of Governors has-been party, OBA swearing-in ceremony, Pottawatomie County Bar Association meeting and OBA Awards Committee meeting. At the ABA Midyear Meeting in Las Vegas, she attended the YLD Assembly, Oklahoma ABA delegation dinner and House of Delegates. She said the division will hold its board meeting tomorrow and will assemble bar exam survival kits to be handed out at the exam.

#### BOARD LIAISON REPORTS

Governor Oliver said the **Lawyers Helping Lawyers Assistance Program** in November was evaluated by the ABA Commission on Lawyer

Assistance Programs, which has issued its report that includes recommendations. He summarized the recommendations. Executive Director Williams shared information about utilization of LHL services. Governor Hicks said the **Access to Justice Committee** has met twice and is looking at the information on low cost or no cost legal services on the OBA website. MAP Director Calloway, a staff liaison to the committee, mentioned a pro se docket created in Oklahoma County is seeking volunteer lawyers, and committee members are going to work with JusticeCorps to set up a program utilizing undergraduate students who don't give legal advice but serve as courthouse navigators. Governor Williams said the Tulsa County Courthouse has a kiosk to assist the public. Past President Hays said the **Professionalism Committee** is brainstorming projects, deciding whether or not to do a webinar and considering writing articles. Governor Hutter said the **Solo & Small Firm Conference Planning Committee** speaker slots are filled, a bar journal article will be published in March, a new

logo was created and the opening event will be a black and white party. Governor Hermanson said the **Law Day Committee** discussed the contest entries and work continues on the TV show. Merging the Law Day Committee with the **Law-Related Education Committee** was discussed. Executive Director Williams shared the history of the OBA's LRE Program and the LRE Committee. Discussion followed. Governor Pringle said the **Legislative Monitoring Committee** held Legislative Reading Day, and 86 lawyers and legislators attended. He summarized activities at the event and shared that nonlawyer legislators said they benefited from the information. The next event is Day at the Capitol on March 12 with great speakers coming. President Chesnut encouraged board members to attend Reading Day next year. Past President Hays said the **Women in Law Committee** is organizing social events and taking on community activities such as a clothing drive and other philanthropic projects. The date for the conference will be Oct. 25 with Marcia Coyle, chief Washington correspondent for *The National Law Journal*, as the keynote speaker focusing on what happens in the Supreme Court. Governor DeClerck said the **Communications Committee** has had difficulty in reviewing the OBA's 15 consumer brochures for accuracy and is asking for help in encouraging sections to assist. Discussion followed. The board will consider its involvement and asked Governor DeClerck to go back to the committee requesting answers to questions about brochure demand and whether any brochures might be eliminated. Governor Williams said the **Diversity Committee** will be working with the Family Law Section to better understand

differences in ethnicity. Governor Nowakowski said the **Awards Committee** met to review awards presented each year at the Annual Meeting. Two suggestions for new awards were received, and the committee will submit its recommendation to the board for consideration at the next meeting.

### REPORT OF THE GENERAL COUNSEL

Using a visual presentation, General Counsel Hendryx reviewed highlights of the Professional Responsibilities Commission report, provided to board members. She described the process for filing complaints, which must be in writing, and pointed out complaints last year involved fewer than 5 percent of all OBA members. She said the total number of complaints have dropped; however, the severity of complaints has increased, which is the national trend. She explained the discipline process and summarized the Professional Responsibility Tribunal report. She updated the board that the Bednar case has been dismissed. A written report of PRC actions and OBA disciplinary matters for Dec. 14, 2018, to Jan. 11, 2019, was also submitted to the board for its review.

### JUDICIAL NOMINATING COMMISSION ELECTION PROCEDURES

President Chesnut noted the procedures for the election of lawyer members to the JNC included in the board packet have been used in the past, and it is proposed to use the same procedures this year with no changes. The board approved the JNC election procedures.

### HEALTH LAW SECTION BYLAW AMENDMENTS

Section Chairperson-Elect Melissa Revell presented the section's proposed amendment to its bylaws that would allow a

chairperson to serve in that position more than once. The board approved the amendment.

### EXECUTIVE SESSION

The board voted to go into executive session, met in executive session and voted to come out of executive session.

### NATIONAL CONFERENCE OF COMMISSIONERS FOR UNIFORM STATE LAWS

President Chesnut said he has submitted the names of James C. Milton, Tulsa; Rusty LaForge, Oklahoma City; and Catherine Z. Welsh, Tulsa, to Gov. Stitt for consideration and appointment of one person with a term to expire 6/1/2022.

### TECHNOLOGY STRATEGIC PLAN ANNUAL REVIEW AND TECHNOLOGY REPORT

Executive Director Williams said technology has become very common place and integrated into all business operations. He said the YLD suggested the OBA purchase a wireless printer and charging stations. He stated he is finding it difficult to recruit volunteers interested in working on a technology strategic plan.

### NEW BOARD MEMBER ORIENTATION

OBA directors gave a brief overview of their department responsibilities.

### NEXT MEETING

The Board of Governors met in March. A summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be Friday, April 19, at the Marland Mansion in Ponca City.

# Scholarship Recipient Highlights

## CHAPMAN-ROGERS SCHOLARSHIP



### Samantha Oard

**Hometown:** Tulsa

**Law School:** OCU School of Law

**Graduation Date:** 2019

**What field of law are you studying:** Homeland/National Security Law and American Indian Law

**Undergraduate:** OSU

**Undergrad Major:** Sports media/strategic communications with a minor in political science

**Graduation Date:** 2016

#### What are your short-term and long-term goals?

In the short-term, my professional and personal goal is to graduate law school with honors and pass the bar exam. In the long-term, my goal is to work in federal law enforcement and help advocate for the advancement of ethical leaders who value the dignity of all human life.

#### What made you decide to attend law school?

I have wanted to attend law school since my sophomore year in high school. I always valued the rule of law and the way that the law interacts with our daily lives. My family has sacrificed many years in public service as both lawyers and law enforcement officers, and I wanted to gain a better understanding of the law.

#### Are there any laws or social rules that completely baffle you?

I have always found it hilarious to look up wacky laws that are still on the books in my hometown of Tulsa. The most interesting one I have found is that in Tulsa, you may not open a soda bottle without the supervision of a licensed engineer.

#### What historical figure inspires you and why?

It would be hard to pick just one so I will pick a group, the Founding Fathers. Specifically, Alexander Hamilton, James Madison, Thomas Jefferson and George Washington. The system of government they postulated and created from scratch has endured as a beacon of hope to millions of people around the world. I hope that one day I can continue to serve the system of government that they helped create and to assist in upholding their highest ideal of treating all men as being created equal.

#### What is the most important thing you have learned in law school or undergrad?

The most important thing I have learned in my years attending both OSU and OCU is that civil discourse is the most crucial feature of our democratic republic. Being able to disagree civilly with someone who holds opposing views is something that is vital to the continuance of our system of government. I have learned there are merits to both sides of every issue and that relationships are built on mutual respect. People are more important than politics and being right should never talk you out of being kind.



## CHAPMAN-ROGERS SCHOLARSHIP



### Lashandra Peoples-Johnson

**Hometown:** Dallas

**Law School:** TU College of Law

**Graduation Date:** 2019

**What field of law are you studying:** My goal is to gain exposure in as many fields of law as possible while in law school; I am particularly interested in litigation and criminal law.

**Undergraduate:** TU

**Undergrad Major:** Business Law Management and Management Information Systems

**Graduation Date:** 2008

#### What are your short-term and long-term goals?

My short-term and long-term goals are to be impactful. I know it sounds cliché, but I want to do all I can do, in the short term and long term, to be a positive impact on the community of Tulsa by being the voice for those silenced by injustice.

#### What made you decide to attend law school?

The rising tension between police officers and urban communities is one of the main events that reignited my passion for the law. As a mother and a wife, I originally was hesitant about quitting my job and starting this journey. I have always known that law was my passion, and I am so glad I finally took the leap.

#### Are there any laws or social rules that completely baffle you?

The law that completely baffles me is the law regarding not allowing unrepresented convicted inmates from raising the same legal issues in post-conviction appeals. Although I know the public policy rationale for this law, I think it is such an injustice. It is so common for convicted inmates to work on post-conviction appeals without legal representation. I think that precluding someone from raising an issue once they obtain legal representation, because they did not correctly raise the issue when they did not have legal representation, is completely baffling.

#### What historical figure inspires you and why?

Katherine Johnson, who was captured in the book and movie *Hidden Figures*, inspires me because she was such a fighter against sex and racial discrimination. As one door closed, she found another door. Most inspiring was her attitude. She maintained a good attitude and did not allow the quality of her work to decline, even when she did not receive recognition. I hope to adopt her reliance as I enter the legal profession!

#### What is the most important thing you have learned in law school or undergrad?

The most important thing that I have learned is that there is such a large need for community legal education. It is mind baffling the amount of people who do not know the law (whether it is criminal rights, civil remedies or estate planning).



## WAYS TO SUPPORT THE OKLAHOMA BAR FOUNDATION



### Fellows Program

*An annual giving program for individuals*



### Community Fellows Program

*An annual giving program for law firms, businesses and organizations*



### Memorials & Tributes

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



### Unclaimed Trust Funds

*Direct funds to the OBF by mailing a check with the following information on company letterhead: client name, case number and any other important information*



### Cy Pres Awards

*Leftover monies from class action cases and other proceedings can be designated to the OBF's Court Grant Fund or General Fund as specified*



### Interest on Lawyer Trust Accounts

*Prime Partner Banks give higher interest rates creating more funding for OBF Grantees. Choose from the following Prime Partners for your IOLTA:*

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# Upholding Our Oaths and Ensuring the Rights of All People

By Brandi Nowakowski

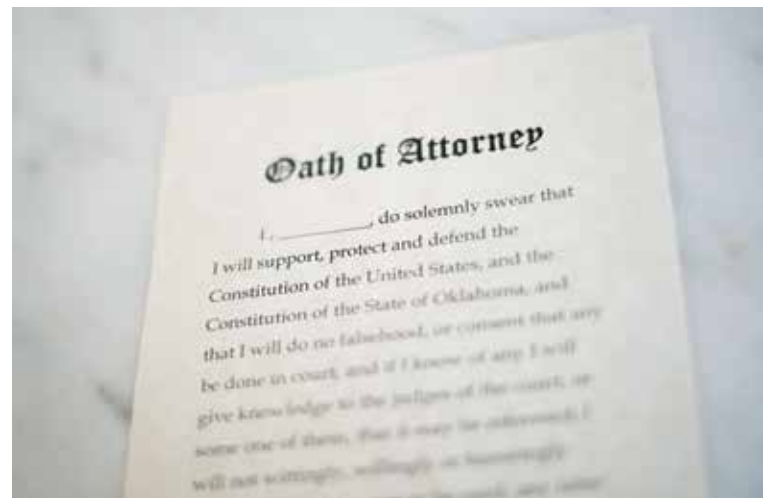
**AS IS HIGHLIGHTED** throughout this issue of the *Oklahoma Bar Journal*, Law Day 2019 is coming up on May 2! An annual event, Law Day is about reflecting on the role of law in the foundation of our great country and recognizing the importance of the law in our society. This year, the theme for Oklahoma's Law Day mirrors that of the American Bar Association (ABA): Free Speech, Free Press, Free Society. Thus, according to the ABA, the focus of Law Day 2019 is on "these cornerstones of representative government" as we are called to understand and protect these rights to ensure, as the U.S. Constitution proposes, "the blessings of liberty for ourselves and our posterity."

In thinking about this theme, I am drawn to the ways in which we as lawyers are uniquely prepared and positioned to protect these rights for all people and ensure that future generations experience those freedoms which our founding fathers fought arduously to secure. As we were sworn in as attorneys, each and every one of us took an oath to "support, protect and defend the Constitution of the United States, and the Constitution of the State of Oklahoma ... with all good fidelity," pledging faithfulness, continued loyalty and support to

the ideals which are the building blocks of a free society.

Each and every year, Law Day supports this calling by providing opportunities for Oklahoma lawyers to do just that. Through the statewide and county Ask A Lawyer programs, our lawyers donate tens of thousands of dollars in legal services by giving free legal advice. This is a fantastic way for us to ensure the rights of all people, even those who may not always have access to counsel! However, this theme – this focus – should be in the forefront of our minds not just on Law Day, but every day as we undertake the practice of law. Yet, how might we carry this throughout the year? Of course, engaging in the practice of law as zealous and ethical advocates for our clients fulfills this goal, but what if we can do more? We can! The YLD was organized to give young lawyers an avenue to work on bar-related and public service-related projects. Through programs like Wills for Heroes, the free Young Adult Guide app and more, the YLD provides young lawyers a means to uphold our oaths. Through projects like these,

we have the ability to reach out and take affirmative steps to protect the rights of individuals, ensuring a free society which bestows upon all the blessings of liberty.



To that end, I encourage everyone to get involved! Consider taking an hour or two out of your day on May 2 to volunteer at an Ask A Lawyer program this Law Day or consider volunteering at one of the upcoming YLD service events. Better yet, if you can, do both! None of us can do everything, but we can all do something.

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Ms. Nowakowski practices in Shawnee and serves as the YLD chairperson. She may be contacted at [brandi@stuartclover.com](mailto:brandi@stuartclover.com). Keep up with the YLD at [www.facebook.com/yld](http://www.facebook.com/yld).

# FOR YOUR INFORMATION

## ACQUISITION AFFECTS MEMBER BENEFIT OPTION

Kurent has been discontinued as an OBA member benefit effective immediately. The parent company of Kurent, Software Technology LLC, has announced it will be sunsetting the service due to its acquisition of CosmoLex. There will be continued support for existing Kurent users for some time in the future. CosmoLex, which is an OBA member benefit, is a cloud-based product that includes legal billing, trust and general business accounting, documents, emails and a client portal. Visit the benefits page on MyOKBar for additional information.

## ASPIRING WRITERS TAKE NOTE

We want to feature your work on "The Back Page." Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry is an option too. Send submissions of about 500 words to OBA Communications Director Carol Manning, carolm@okbar.org.

## OBA MEMBER REINSTATEMENTS

The following member suspended for nonpayment of dues or noncompliance with the Rules for Mandatory Continuing Legal Education have complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Wes Eugene Wadle  
OBA No. 20006  
1016 Fountain Creek Blvd.  
Pottsboro, TX 75076

## OKLAHOMA SUPREME COURT JUSTICE REIF ANNOUNCES RETIREMENT

Oklahoma Supreme Court Justice John Reif announced he will retire at the end of April. He has served on the state's highest court for nearly 12 years.

"Justice John Reif has served the people and the state of Oklahoma as a respected jurist, with honor, distinction and grace for over 38 years," Gov. Stitt said in a statement. "We owe him a debt of gratitude for his consistent and faithful service."

Before serving on the Supreme Court, Justice Reif served for 23 years on the Court of Civil Appeals. He is a member of the TU College of Law Hall of Fame and began his legal career in 1977 as an assistant district attorney in Tulsa County.



Justice John Reif



## KICK IT FORWARD PROGRAM PAYS 11 MEMBERS' DUES

The Kick It Forward Program paid 11 members' dues for 2019 totaling \$3,025.

The program was born out of a desire to help fellow lawyers with financial difficulties. With the many economic challenges lawyers face today, it can be a struggle to build up and maintain a legal practice. That's why the Young Lawyers Division launched Kick It Forward in 2015, with a mission to assist lawyers of all ages in need by paying their OBA dues while they get on their feet.

The program is funded by donations made through an election on your dues statement. By completing the Kick It Forward line, lawyers agree to pay \$20, or the amount of their choice, to the program in addition to annual dues.

## OKLAHOMA CITY ATTORNEYS CREATE NONPROFIT

A group of Oklahoma City attorneys created a nonprofit called Oklahoma County Courthouse Access Clinic to help Oklahoma families navigate the judicial system. Since they started in February, they have helped nearly 25 families.

Sarah Murphy Bondurant, one of the attorneys who helped create the nonprofit, says after months of looking into the issue, she learned cases involving probates and adult and minor guardianships are a few that people are having the most trouble with.

"They have a stack of paperwork that they have to fill out and they don't know what to do or even if they get it filled out they don't know what to do with it," said Ms. Bondurant.

Over 30 attorneys have volunteered at least 3 hours of their time to spend with one family and walk them through each step of the uncontested and unrepresented cases. They hope to eventually expand the program statewide and assist in other cases.

## OBA MEMBER RESIGNATIONS

The following members have resigned as members of the association and notice is hereby given of such resignation:

Andrea Lea Agee  
OBA No. 31338  
52246 Highway 90, #6  
Slidell, LA 70461

Melanie Anne Fannin  
OBA No. 15666  
453 Covered Bridge Drive  
Driftwood, TX 78619

Adrienne Bramlett Kvello  
OBA No. 32953  
3140 N. Tartan Way  
Fayetteville, AR 72703

Christopher John Bernard  
OBA No. 736  
9012 S. Lakewood Court  
Tulsa, OK 74137

Blake Adam Hayes  
OBA No. 20720  
P.O. Box 958  
Jenks, OK 74037-0958

David W. Lindemood  
OBA No. 5432  
900 Pine Court  
Midland, TX 79705

Dorothy S. Blohm  
OBA No. 13966  
10713 S. Redbud Pl.  
Jenks, OK 74047

Susan Margaret Hinck  
OBA No. 16761  
5073 Kings Wood Dr. N.E.  
Roswell, GA 30075

Ali M. Mojdehi  
OBA No. 6297  
655 W. Broadway, Ste. 900  
San Diego, CA 92101-8484

Nicholas John Bykowsky  
OBA No. 1404  
P.O. Box 10847  
Pensacola, FL 32524

Jerry Lee Holcomb  
OBA No. 4285  
3016 W. 26th St.  
Joplin, MO 64804

Barbara Baker Reeves  
OBA No. 9633  
4610 S. Zunis Ave.  
Tulsa, OK 74105

Hiram Ward Camp  
OBA No. 1441  
12217 San Victorio NE  
Albuquerque, NM 87111

Lisa Jean Hughes  
OBA No. 20244  
5149 N.W. 15th St.  
Bell, FL 32619

Alan Robert Sacks  
OBA No. 19019  
3 Brooklands, Apt 4E  
Bronxville, NY 10708

Anne Catherine Cardea  
OBA No. 30782  
7085 E. 2nd Avenue  
Denver, CO 80220

David William Illingworth  
OBA No. 31103  
114 S. Ptarmigan Dr.  
Woodland Park, CO 80863

Frank William Wall  
OBA No. 9302  
2536 N.W. 56th St.  
Oklahoma City, OK 73112-7141

Karin Johnson Chatfield  
OBA No. 11256  
1374 S. Vine St.  
Denver, CO 80210-2335

Lawrence A.G. Johnson  
OBA No. 4705  
11910 S. 96th E. Ave.  
Bixby, OK 74008

Amy Payne Weselka  
OBA No. 19353  
7917 Briar Brook Court  
Dallas, TX 75218

David Elias Cowen  
OBA No. 18526  
P.O. Box 629  
Galveston, TX 77553

Robert Dean Jones  
OBA No. 18949  
6901 Donau Ct.  
Chesapeake Beach, MD 20732-4197

Yasasvin Nandish Wijetilleke  
OBA No. 32538  
17555 Patti Ct.  
Montrose, CO 81401

Matthew Thomas Davies  
OBA No. 20667  
11609 Leaning Elm Rd.  
Oklahoma City, OK 73120

Wendy Clifton Kinsey  
OBA No. 32934  
8604 S.W. 57th Street  
Oklahoma City, OK 73179

## ON THE MOVE

**Drew Neville** and **Chris Huckaby** have joined McAfee & Taft's Oklahoma City office as of counsel and **Emma Payne** has joined as an associate. Mr. Neville's practice focuses on appellate law and litigation, and he graduated from the OU College of Law in 1972. Mr. Huckaby practices in the areas of energy, oil and gas and litigation, and he graduated from the OU College of Law in 1995. Ms. Payne's practice is focused on complex business litigation with an emphasis on matters affecting the energy industry. She graduated from the OCU School of Law in 2016.

Barber and Bartz PC and R&R Strategies PLLC have announced their merger. **Kara Greuel** has been named a shareholder and **Stephanie Mitchell** will join the firm as of counsel.

**Lane Neal** has been named partner at the Oklahoma City-based law firm Durbin, Larimore & Bialick. His practice areas include appellate,

civil litigation, insurance law, motor vehicle accidents, personal injury, products liability and environmental law. He graduated from the OU College of Law in 2008.

**Dustin Bradley** opened Bradley Law Firm PLLC. He will handle a broad range of civil, business and family law matters. The law firm is located at 1811 S. Baltimore Ave, Tulsa, 74119, and can be reached at 918-933-5367.

**Elizabeth A. Price, Jessica D. Hatcher** and **Tom R. Russell** have been named partners at Hartzog Conger Cason. Ms. Price concentrates her practice on the areas of commercial litigation, class action and other complex business litigation and appellate practice particularly in federal appeals courts. She graduated from the OU College of Law in 2008. Ms. Hatcher focuses her practices on oil and gas administrative law. Mr. Russell's practice is concentrated in the areas of corporate

law, energy and environmental law, mergers and acquisitions and private placement securities offerings. He graduated from the OU College of Law in 2006.

**Daniel C. Hays** was named managing director of Chansolme Harroz Hays Schnebel PLLC. He practices a wide range of litigation and will lead the firm's litigation team. He graduated from the OCU School of Law in 2010.

**Philip A. Ross** and **Alex E. Mustain** joined the law firm of Baumert, Cummings & Hiatt. Mr. Ross has joined the firm as of counsel and will be engaged in the general practice of law and in criminal defense. He graduated from the TU College of Law in 1983. Mr. Mustain has joined the firm as an associate attorney and will focus his practice on the general practice of law including business, family law and domestic cases. He graduated from John Marshall School of Law in 2018.

## KUDOS

**Javier Ramirez** of Okmulgee was appointed to serve on the Oklahoma Commission on Children and Youth.

**Jacqueline Stout** of Pryor was sworn in as special judge for District 12.

**Brea Clark** of Norman was elected mayor for the city of Norman.


## AT THE PODIUM

**Richard D. James** presented "Automobile Accident Claim Settlement from the Attorney's Point of View" at the Annual Convention and Leveling Conference of Mennonite Motorist Aid Inc.

**Kim Love** moderated a panel discussion titled "Hot Topics in Ethics" sponsored by the Tulsa Chapter of the Oklahoma Business

Ethics Consortium. The panel covered ethics and compliance topics such as gifts and entertainment, common missteps and best practices.

**Marty Ludlum** gave three presentations on international/intercultural trade and regulations to Acada University in Helsinki.



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## IN MEMORIAM

**J**ohn Dooley Board of Amarillo, Texas, died March 11. He was born March 3, 1935, in Oklahoma City and graduated from Boise City High School in 1953. **He was in the ROTC and was commissioned as an officer in the U.S. Army. He served as a military intelligence officer for two years and then returned to school.** He received his J.D. from the OU College of Law in 1962. He worked for several different law firms before becoming a sole practitioner and opening John Board Law Office. He was active in his community and served on the boards for First National Bank of Guymon and Texas County Memorial Hospital. Memorial contributions can be made to BSA Hospice of the Southwest.

**D**avid L. Boren of Houston died Sept. 22, 2018. He grew up in Henderson, Texas, and **served four years in World War II as a pilot.** He graduated from the SMU Dedman School of Law in 1948 and was licensed to practice law in Texas and Oklahoma. His practice focused on oil and gas law and land titles. Ballroom dancing was his passion.

**J**ohn Patrick Cremin of Tulsa died Feb. 6. He was born Nov. 18, 1944, in Tulsa. He graduated from Bishop Kelley High School in 1962, from TU with a degree in journalism in 1966 and from the TU College of Law in 1973. After his admission to the bar in 1974, he joined Hall, Estill, Hardwick, Gable, Golden and Nelson PC. He focused his practice on employment litigation, defending employers and supervisors in more than 30 jurisdictions. He loved people, karaoke and TU athletics. Memorial contributions can be made to Holy Family School and TU.

**R**ichard Eugene Hovis of Oklahoma City died Jan. 27. He was born Jan. 21, 1945, in Tulsa. He graduated from Edison High School, OSU with a degree in biology and received his J.D. from the TU College of Law. He practiced law in Tulsa, Muskogee and Hobart, where he was elected to be associate district judge for Kiowa County. His family and friends enjoyed his kind nature and sarcastic sense of humor.

**J**udge Michael Turner Norman of Muskogee died Feb. 25. He was born Oct. 30, 1943. He received his J.D. from the TU College of Law in 1968. After law school, he returned to Muskogee where he went into private practice with his father. He was appointed municipal judge in 1979, where he served with distinction for 20 years. He ran for the district court judge position and went on to serve in that capacity for 20 years. Memorial contributions can be made to the St. Paul Sanctuary Fund, Junior Golf at Muskogee High School or the Whittier Elementary School Summer "Food for Children" fund.

**J**ohn A. Philbin of Nichols Hills died Feb. 8. He was born July 2, 1934, in Shawnee. He graduated from OU and earned his J.D. from the OCU School of Law. After law school, he joined the law firm that later became known as Speck, Philbin, Fleig, Trudgeon and Lutz, where he practiced for more than 50 years. He was an avid OU football fan and former president of the Oklahoma City All Sports Association. Memorial contributions can be made to Pediatric Cancer Research at Children's Hospital Los Angeles or Oklahoma Chapter of the Humane Society.

### 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:

Mackenzie Scheer  
Communications Dept.  
Oklahoma Bar Association  
405-416-7084  
barbriefs@okbar.org

*Articles for the August issue must be received by July 1.*




**Josie Caroline Stanley-Reiter** of Oklahoma City died Feb. 3. She was born Dec. 1, 1974, in Tahlequah. She earned a Bachelor of Science in criminal justice with a paralegal option from Northeastern State University and then went on to receive her J.D. from the OU College of Law. She worked for Cherokee Nation and several law offices before becoming a staff attorney at the Oklahoma Indian Legal Services. Friends and co-workers describe Ms. Stanley-Reiter as dedicated and hard working.

**John B. Roberts** of New York City died June 8, 2018. He was born Dec. 1, 1958, and graduated from the OU College of Law in 1984. He was an attorney and certified public accountant. He will be remembered for his kind, gentle spirit and welcoming smile.

**John Rowntree** of Edmond died Oct. 27, 2018. He was born Oct. 9, 1948, in Oklahoma City. He attended Harding High School, the University of Virginia, OU and the OU College of Law. He was a trial lawyer for 20 years and practiced oil and gas law with his father. His greatest pride and joy were his children, grandchildren and wife, Nancy, who he was married to for 47 years. Memorial contributions can be made to A Chance to Change and the Mental Health Association of Oklahoma.

**James Clarence Thomas** of Tulsa died Jan. 6. He was born Jan. 6, 1929, in Alva. He attended the University of Alabama School of Law and received a fellowship to get his master's degree at New York University after graduating. After his fellowship, he moved to Tulsa where he became a professor of law for 48 years. He loved his family and enjoyed taking road trips. He will be remembered for his generosity, humor, strong work ethic, positive attitude and love for teaching. Memorial contributions can be made to the Mental Health Association of Oklahoma.


**Jeremy Douglas West** of Oklahoma died Oct. 19, 2018. He was born Oct. 14, 1969, in Fort Smith, Arkansas. He graduated from Pocola High School in 1987, Northeastern State University with a degree in accounting in 1993 and from the OU College of Law in 1996. He was a personal injury lawyer his entire career. Mr. West founded the firms West & Associates and West, Ylla, Gosney. He loved helping people, going to the lake, watching movies and flying.



Appellate Litigation & Consulting

Harvey D. Ellis

Author on Oklahoma Procedural Law:  
*Oklahoma Appellate Practice* (Thomson Reuters)  
*Oklahoma Civil Procedure Forms and Practice* (LexisNexis)

  
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## 2019 ISSUES

### MAY

**Technology**  
Editor: C. Scott Jones

### AUGUST

**Access to Justice**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: May 1, 2019

### SEPTEMBER

**Bar Convention**  
Editor: Carol Manning

### OCTOBER

**Appellate Law**  
Editor: Luke Adams  
ladams@tisdalohara.com  
Deadline: May 1, 2019

### NOVEMBER

**Indian Law**  
Editor: Leslie Taylor  
leslietaylorlaw@gmail.com  
Deadline: Aug. 1, 2019

### DECEMBER

**Starting a Law Practice**  
Editor: Patricia Flanagan  
patriciaaflanaganlawoffice@cox.net  
Deadline: Aug. 1, 2019

## 2020 ISSUES

### JANUARY

**Meet Your Bar Association**  
Editor: Carol Manning

### FEBRUARY

**Family Law**  
Editor: Virginia Henson  
virginia@phmlaw.net  
Deadline: Oct. 1, 2019

### MARCH

**Constitutional Law**  
Editor: Clayton Baker  
claytonbaker@wardandlee.com  
Deadline: Oct. 1, 2019

### APRIL

**Law Day**  
Editor: Carol Manning

### MAY

**Diversity and the Law**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Jan. 1, 2020

### AUGUST

**Children and the Law**  
Editor: Luke Adams  
ladams@tisdalohara.com  
Deadline: May 1, 2020

### SEPTEMBER

**Bar Convention**  
Editor: Carol Manning

### OCTOBER

**Mental Health**  
Editor: C. Scott Jones  
sjones@piercecouch.com  
Deadline: May 1, 2020

### NOVEMBER

**Alternative Dispute Resolution**  
Editor: Aaron Bundy  
aaron@bundylawoffice.com  
Deadline: Aug. 1, 2020

### DECEMBER

**Ethics & Professional Responsibility**  
Editor: Amanda Grant  
amanda@spiro-law.com  
Deadline: Aug. 1, 2020

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



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## 5 Productivity Hacks for Working From Home

According to the 2017 U.S. Census, 5.2 percent of workers in the U.S. work from home. That is approximately 8 million people. Emily Price, author of *Productivity Hacks: 500+ Easy Way to Accomplish More at Work*, gives a handful of hacks to help you stay focused while working from home.

[tinyurl.com/y3uk32my](https://tinyurl.com/y3uk32my)



## How to Present Your Case for a Promotion

It's never a good idea to walk into your boss' office and simply ask for a promotion without being prepared. You need substance to back it up, and the actual request will be less stressful and more productive if you are prepared. Here is what you need to do.

[tinyurl.com/y5zjbbxh](https://tinyurl.com/y5zjbbxh)



## 15 Podcasts to Keep You Motivated

If you are struggling to find motivation within yourself, podcasts are a great way to lift your spirits when you need it the most. Here are 15 podcasts to have on your playlist to help you stay motivated and reach your goals.

[tinyurl.com/y4tnbsrn](https://tinyurl.com/y4tnbsrn)



## Best Summer Vacation Spots

Summer is right around the corner, which means it's time to start planning your summer vacation. Check out this list of 30 summer vacation ideas you won't need a passport for.

<https://tinyurl.com/yybk3dbm>



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ATTORNEY: JENNINGS |TEAGUE, an AV rated downtown OKC litigation firm, whose primary areas of practice are insurance defense, products liability and transportation defense, has a position available for an attorney with 2+ years' experience. The job duties will encompass all phases of litigation including, pleading and motion practice, research, analysis and discovery. Salary is commensurate with experience. Please send resume to bwillis@jennings-teague.com.

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TULSA LAW FIRM SEEKING PATENT ATTORNEY. Will train. Experience a plus. Send replies to Oklahoma Bar Association, "Box O," P.O. Box 53036, Oklahoma City, OK 73152.

## GRANTS FUNDED

LEGAL SERVICES CORPORATION NOTICE OF AVAILABILITY OF GRANT FUNDS FOR CALENDAR YEAR 2020. The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2020. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be available at <http://www.lsc.gov/grants-grantee-resources/grantee-login> during the week of April 8, 2019. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. On or around the week of March 11, 2019, LSC will publish the list of service areas for which grants are available and the service area descriptions at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas>. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC's online application system in order to participate in the grants process. The online application system will be available at [https://lscgrants.lsc.gov/EasyGrants\\_Web\\_LSC/Implementation/Modules/Login/LoginModuleContent.aspx?Config=LoginModuleConfig&Page=Login](https://lscgrants.lsc.gov/EasyGrants_Web_LSC/Implementation/Modules/Login/LoginModuleContent.aspx?Config=LoginModuleConfig&Page=Login) during the week of April 8, 2019. Please visit <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> for filing dates, applicant eligibility, submission requirements and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to [LSCGrants@lsc.gov](mailto:LSCGrants@lsc.gov).

# The Greatest Speech in U.S. History: Abraham Lincoln's Gettysburg Address

By Clark Musser and Travis Pickens

**O**N NOV. 19, 1863, two and a half years into the Civil War and just outside the town of Gettysburg, Pennsylvania, a national cemetery was dedicated. The customary centerpiece of such ceremonies was an oration, usually lasting two or more hours. The organizers were assured of a successful event when Edward Everett, the greatest orator of the age, agreed to deliver the oration. The president of the United States was asked to make the formal dedication by providing “a few appropriate remarks.” Mr. Everett’s oration, which preceded the president’s dedication, was described by an informed observer as “spellbinding.” He held the crowd of 15,000 in “rapt attention” for two hours.

Moments thereafter, Abraham Lincoln – in two and a half minutes,

10 sentences and 272 words – changed the course of world history. As historian Joseph Ellis tells us, “Lincoln captured equality and liberty and made them integral to our nationhood.” The address is a benediction to all who died – not just those in blue – and it was a *raison d’être* for our nation, which was “conceived in liberty, and dedicated to the proposition that all men are created equal ... that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth.”

Lincoln was a highly skilled and successful lawyer. He was described by his longtime law partner as “governing all by his intellect and the superiority of his powers of reason,” skills he honed as a trial lawyer. We may deduce Lincoln would not have been able to capture the soul of America and its unique place in history with such irrefutable logic and morality were it not for his devotion to the rule of law and decades of service to his clients.

In his address, Lincoln merged the principles of equality and liberty with such eloquence and logic that they have become morally irrefutable, and thus upheld ever

since by all right-minded lawyers and judges. Before Lincoln’s presidency, numerous statesmen, writers and clerics in concert with various organizations and societies advocated abolition of slavery. Few, if any, espoused equality under the law, regardless of race.

Every time a lawyer drafts a law, explains a law or argues a law, and every time a judge interprets and applies a law, Lincoln’s words are manifest. Every time a lawyer represents the poor, the powerless, the inept and the insane or the rich, the powerful, the able and the keen, the lawyer preserves the spirit of Lincoln at Gettysburg.

In our nation and under our laws, we are free, we are equal, we are fair, and we are worthy. Lawyers today have the same responsibility to “seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession” as stated in the preamble to the Oklahoma Rules of Professional Conduct.

We lawyers may not feel Lincoln’s hand upon our shoulders, but it is there.

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Mr. Musser and Mr. Pickens practice in Oklahoma City.





MCLE CREDIT 3/1

# TRUST ACCOUNTING ESSENTIALS

WEDNESDAY, APRIL 24, 2019

1:30 - 4:10 P.M.

Oklahoma Bar Center

FOR DETAILS AND TO REGISTER, GO TO [WWW.OKBAR.ORG/CLE](http://WWW.OKBAR.ORG/CLE)

Stay up-to-date and follow us on



**The need to handle funds entrusted to a lawyer by a client or third person with scrupulous care should be self-evident.**

Nonetheless, cases continue to arise where practicing lawyers, either inadvertently or intentionally, mishandle trust funds, subjecting clients and third persons to the risk of economic hardship and undermining public confidence in the legal profession.

The purpose of this course is threefold: (1) to describe the rules for handling trust funds and property; (2) to discuss relatively recent changes to the handling of fees and trust transactions; and (3) to provide practical guidance on how to use both print and electronic tools to produce client and general ledgers and to perform proper three-way reconciliation of trust funds accounts.

## NOT AVAILABLE ONLINE

TUITION: \$75 before April 17, 2019  
\$100 after April 17, 2019  
\$125 walk-ins  
No Discounts Apply.

THIS PROGRAM WILL NOT BE WEBCAST OR RECORDED.

# WEBCAST ENCORES

STILL NEED  
“LIVE”  
CREDIT FOR 2018?

## The New Medical Marijuana Law: Navigating the Legal and Ethical Obstacles

(1 Total Credit Hour;  
1 of which can be used towards Ethics)

April 17 @ 9 a.m.

## Courtesy in the Sandbox: Being Professional While Still Zealously Representing Your Client

(3 Total Credit Hours;  
3 of which can be used towards Ethics)

April 18 @ 10 a.m.

## #METOO: Sexual Harassment in the Workplace

(6 Total Credit Hours)

April 25 @ 11 a.m.

## Legal Updates 2018 - Day One

(6 Total Credit Hours)

April 27 @ 9 a.m.

## Legal Updates 2018 - Day Two

(6 Total Credit Hours;  
1 of which can be used towards Ethics)

April 28 @ 11 a.m.

## iPractice on the iPad: How iPads Can Be Used Effectively in a Law Practice

(1 Total Credit Hour)

April 29 @ 11:15 a.m.

## How to Manage Your Workload, Tasks & Time

(1 Total Credit Hour)

April 29 @ 12:30 p.m.

## Microsoft Word Tips for Legal Users

(1 Total Credit Hour)

April 29 @ 1:30 p.m.

## Much Better Methods for Drafting Complex Legal Documents

(1 Total Credit Hour)

April 30 @ 9 a.m.

## Addressing Security with Your Clients (ethics)

(1 Total Credit Hour;  
1 of which can be used towards Ethics)

April 30 @ 10 a.m.

## How to Protect Yourself and Preserve Confidentiality When Negotiating Instruments (ethics)

(1 Total Credit Hours;  
1 of which can be used towards Ethics)

April 30 @ 11:30 a.m.

## Power Hour: Maximize the Utility of Microsoft Outlook

(1 Total Credit Hour)

April 30 @ 12:30 p.m.

## Fight the Paper!

(1 Total Credit Hour)

April 30 @ 1:30 p.m.

## Cybersecurity & the Ethical Pitfalls of Everyday Law Office Computing (ethics)

(1 Total Credit Hour;  
1 of which can be used towards Ethics)

April 30 @ 2:30 p.m.