### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MARK E. SCHELL,	}
Plaintiff,	
v.	Case No. CIV-19-0281-HE
JANET JOHNSON, et al.,	
Defendants.	}

JOINT MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT OF DEFENDANTS, THE MEMBERS OF THE BOARD OF GOVERNORS, THE EXECUTIVE DIRECTOR OF THE OKLAHOMA BAR ASSOCIATION, AND THE CHIEF JUSTICE AND JUSTICES OF THE OKLAHOMA SUPREME COURT, NAMED IN THEIR OFFICIAL CAPACITIES

Submitted this 29th day of April, 2025.

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### **MOTION**

Pursuant to FED. R. CIV. P. 56 and Rule 56.1 of the Local Rules of the United States District Court for the Western District of Oklahoma, Defendants, the Members of the Board of Governors ("BOG") and the Executive Director ("ED") of the Oklahoma Bar Association ("OBA"), and the Chief Justice and Justices of the Oklahoma Supreme Court ("OSC"), respectfully jointly move the Court for summary judgment in their favor and against Plaintiff, Mark E. Schell ("Plaintiff"), on his remaining claim and seek a determination that Plaintiff is not entitled to the prospective declaratory and injunctive relief he seeks. In support of their Motion, Defendants show the Court as follows:

### **BRIEF IN SUPPORT**

### I. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

### The Oklahoma Bar Association

- 1. In exercise of its plenary powers over Oklahoma courts granted in Articles 4 and 7 of the Oklahoma Constitution, the OSC created the OBA in 1939. *See In re Integration of State Bar of Okla.*, 95 P.2d 113, 1939 OK 378.
- 2. The OBA is governed by the Rules Creating and Controlling the Oklahoma Bar Association ("RCAC"), or 5 O.S. Ch. 1, App. 1, et seq. (2011), which was also adopted by the OSC in 1939. See In re Integration of State Bar of Okla., 95 P.2d at 116. See Ex. 1, Janet Johnson Declaration ("Johnson Decl."), at ¶4 4 & Ex. A (Excerpts from RCAC).

### 3. The Preamble to the RCAC states:

In the public interest, for the advancement of the administration of justice according to law, and to aid the courts in carrying on the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a

continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereto; to prevent the unauthorized practice of law; to encourage the formation and activities of local bar associations; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof, may be more effectively and efficiently discharged in the public interest, and acting within the police powers vested in it by the Constitution of this State The Supreme Court of Oklahoma does hereby create and continue an association of the members of the Bar of the State of Oklahoma to be known as the Oklahoma Bar Association and promulgates the following rules for the government of the Association and the individual members thereof.

RCAC, Preamble (internal citations omitted); (Johnson Decl. ¶4 & Ex. A, at p.1).

- 4. The RCAC further provide that "[t]he [OBA] is an official arm of this [OSC], when acting for and on behalf of this [OSC] in the performance of its governmental powers and functions." See RCAC, Art. I, § 1. "The [OCS] [] has exclusive jurisdiction in all matters involving the licensing and discipline of lawyers in Oklahoma," and retains sole control over rules governing admission to practice law in the State. See Doyle v. Okla. Bar Ass'n, 998 F.2d 1559, 1563 (10th Cir. 1993) (citations omitted).
- 5. The OBA is an arm of the OSC and an instrumentality of the State. *See Doyle v. Okla. Bar Ass'n*, 787 F.Supp. 189, 192 (W.D. Okla. 1992), *aff'd*, 998 F.2d 1559 (10th Cir. 1993).
- 6. The power of the OSC over attorney licensure is derived from the Oklahoma Constitution and is non-delegable. *See State ex rel. Okla. Bar Ass'n v. Mothershed*, 264 P.3d 1197, 1210, 2011 OK 84, ¶ 33 (quotation omitted).
- 7. The OSC maintains the sole power to determine requirements for licensure to practice law in the State and to regulate and enforce those conditions of licensure. *See id*.
- 8. Policy-making powers are vested in the OBA's House of Delegates, although that power is subordinate to the RCAC and orders promulgated by the OSC. *See* RCAC, Art. III, § 1; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, at p.2).
- 9. Exercising its exclusive jurisdiction over matters of licensing, the OSC determined that a condition of obtaining a license to practice law in this State

is membership in the OBA. See In re Integration of State Bar of Okla., 95 P.2d at 116 (adopting RCAC, including Art. III, requiring membership).

- 10. The ED has no power to enforce licensure or membership requirements. Rather, their function is limited to keeping reports to provide to the OSC, so that it can exercise its enforcement powers. *See* RCAC Art. VI, §§ 4 and 5; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, at pp. 3-4).
- 11. The withdrawal and use of OBA funds is a power of the BOG, and the funds can only be used for purposes approved. *See* RCAC, Art. VII, § 2; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, at p.7).
- 12. The RCAC provide that the funds of the OBA "shall be used and expended for any expense of the [OBA] provided for by the budget."). *See* RCAC, Art. VII, § 1; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, at pp. 5-6).
- 13. The OBA provides members both an opportunity to participate in the budgeting process and a means to opt-out if a member contends an expenditure is objectionable:

There shall be a Budget Committee... [which] shall prepare a proposed annual budget of the financial needs of the [OBA] for the following year. On or before October 20th the proposed budget shall be published in one issue of the Bar Journal, together with a notice that a public hearing thereon will be held by the Budget Committee at the Oklahoma Bar Center on a date and at a time fixed in the notice ....The budget shall be approved by the [BOG] prior to being submitted to the [OSC]. Members of the [OBA] may appear to protest any items included or excluded from the proposed budget. On or before December 10, the finalized budget shall be submitted by the Budget Committee, with its recommendation, to the [OSC]....[which] shall review said proposed budget to determine if the proposed items of expenditure are within the [OSC]'s police powers and necessary in the administration of justice, and will act on said budget prior to December 25 of each year. No funds of the [OBA] shall be used or expended for any items not included in the annual budget as approved by the [OSC], or as subsequently amended by order of the [OSC].

RCAC, Art VII, § 1; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, at pp. 5-6).

- 14. Mr. Schell has never attended an OBA budget meeting or OSC budget hearing, or otherwise participated in the OBA budgeting process, that he can recall. *See* Ex. 2 (Dep. Tr. Mark E. Schell ("Schell Tr."), at 41:16-43:1).
- 15. The RCAC state that "[s]ubject to these rules, the [OBA] may adopt such

- Bylaws as it may deem necessary for its government and for the implementation of these rules." *See* RCAC, Art. XV, § Art. XV; Ex. 1 (Johnson Decl. ¶ 4 & Ex. A, p. 8, and ¶ 5).
- 16. OBA Bylaws, § Art. VII state that "[a] Bar Journal shall be published as directed by the [BOG]." See Ex. 1 (Johnson Decl. ¶ 6 & Ex. B, at p.2).
- 17. The OBA publishes the Oklahoma Bar Journal ("OBJ") in paper and digital form. *See* Ex. 1 (Johnson Decl. ¶ 7).
- 18. The primary purpose of the OBJ is to provide a forum for information on the practice of law, to educate lawyers in their practice areas and to updates in the law, and to provide practitioners OBA-related notices and information on rules, budgets, and developments. *See* Ex. 1 (Johnson Decl. ¶ 8).
- 19. Until a point in 2022, seven practice area-themed and two general practice themed issues of the OBJ were published annually. *See* Ex. 1 (Johnson Decl. ¶ 10).
- 20. At a point in 2022, the OBA began publishing ten themed OBJs annually, all of which had a practice-area theme. See Ex. 1 (Johnson Decl. ¶ 10).
- 21. Every general practice and practice area-themed issue of the OBJ also contains a "President's Message." *See* Ex. 1 (Johnson Decl. ¶ 11).
- 22. The statements in the President's Message are not official OBA statements. *See* Ex. 1 (Johnson Decl. ¶ 11).
- 23. Rather, information contained in the President's Message generally contain the personal leadership statements and goals of the current President. *See* Ex. 1 (Johnson Decl. ¶ 11).
- 24. Almost every general practice and practice area-themed issue of the OBJ also contains a column authored by the ED. *See* Ex. 1 (Johnson Decl. ¶ 11).
- 25. The statements in the ED column are not official OBA statements. *See* Ex. 1 (Johnson Decl. ¶ 11).
- 26. Rather, information contained in the ED's column is intended to be a personal message of the ED. *See* Ex. 1 (Johnson Decl. ¶ 11).
- 27. From March 2017 through June 2022, the OBA published 53 editions of the OBJ, which contained approximately 643 published, authored articles, not

limited to practice-themed articles. This approximate figure includes the BOG President and ED columns, Practice Tips, Back Page, Legal Practice Tips, Ethics & PR, Young Lawyers Division, and other authored items. *See* Ex. 1 (Johnson Decl. ¶ 18).

- 28. For the period from January 1, 2024 to the present, a review of the Minimum Continuing Legal Education Commission ("MCLEC") website reveals it approved approximately 9,427 CLE programs from which a bar member may choose to satisfy their 2024 annual MCLEC requirements. *See* Ex. 1 (Johnson Decl. ¶ 25).
- 29. Every issue of the OBJ published during the time-period at issue herein contains the following disclaimer on the masthead page:

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2025 Oklahoma Bar Association. Statements or opinions expressed in the *Oklahoma Bar Journal* are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors. Information about submissions can be found at www.okbar.org.

Ex. 1 (Johnson Decl. ¶\_12).

30. Since mid-2022, it is the practice of the OBA that every paper OBJ has included the following disclaimer on the footer of each page of every practice-themed OBJ article, which disclaimer is to appear in both the paper form of the OBJ and the pdf form of the OBJ (which are accessible on the OBA website):

Statements or opinions expressed in the [OBJ] are those of the authors and do not necessarily reflect those of the [OBA], its officers, [BOG], Board of Editors or staff.

On the OBA website, there are clickable links to digital copies of each issue's

individual practice-themed articles. In this format, the entire article presents as one page, such that the foregoing disclaimer appears at the end of the article.

See Ex. 1 (Johnson Decl. ¶ 17, and n. 2).

- 31. It is OBA practice that the foregoing disclaimer appears in both the paper and digital version of articles published in the OBJ. *See* Ex. 1 (Johnson Decl. ¶ 17).
- 32. The OBA has had a *Keller* policy for dues for years preceding the filing of this action. The original policy was drafted with the assistance of OU Law Professor Rick Tepker. It was most recently amended by the BOG in March 2020. *See* Ex. 1 (Johnson Decl. ¶ 26).

### Oklahoma Rules of Professional Conduct

- 33. The OSC adopted the Oklahoma Rules of Professional Conduct ("ORPC"), which are amended from time to time by the OSC. *See* Ex. 1 (Johnson Decl. ¶27 & Ex. F) (Excerpts from ORPC); Ex. 2 (Schell Tr. at 91:17-21).
- 34. Mr. Schell is not, in this action, challenging the OSC's right to adopt the ORPC. See Ex. 2 (Schell Tr. at 91:4-16).
- 35. The ORPC Preamble provides in part that "[a]s a public citizen, a lawyer should 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 a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education." *See* Ex. 1 (Johnson Decl. ¶ 28 & Ex. F, at p.1, ¶ 6); Ex. 2 (Schell Tr. at 93:15-21).
- 36. The ORPC provide that it is misconduct for a lawyer to violate or attempt to violate the ORPC. See Ex. 1 (Johnson Decl. ¶ 27 & Ex. F, at p.5).
- 37. The ORPC at Rule 8.4(a) provides in part that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See* Ex. 1 (Johnson Decl. ¶ 29 & Ex. F, at p.3).
- 38. The ORPC at Rule 1.1, Comment (6) requires licensed lawyers to maintain competence in their practice areas, by "keep[ing] abreast of changes in the law and its practice, engag[ing] in continuing study and education and comply[ing] with all continuing legal education requirements to which the lawyer is subject....". See Ex. 1 (Johnson Decl. at ¶ 30 & Ex. F, at p.4).

- 39. Mr. Schell agrees that every Oklahoman is entitled to competent legal representation. *See* Ex. 2 (Schell Tr. at 89:6-9).
- 40. Mr. Schell agrees that having access to articles that contain information about updates in the law can help a lawyer maintain the requisite skill and knowledge in their area of practice. *See* Ex. 2 (Schell Tr. at 98:10-15).
- 41. Mr. Schell agrees that having access to articles that contain information explaining the history and development of laws can help a lawyer maintain the request skill and knowledge in their area. See Ex. 2 (Schell Tr. at 98:16-21).
- 42. Mr. Schell agrees that having access to articles that explain how existing laws may be applied to different groups of Oklahomans can help a lawyer maintain the requisite skill and knowledge in their area. *See* Ex. 2 (Schell Tr. at 98:22-99:17).
- 43. Mr. Schell agrees that it is important, as required by the ORPC, that lawyers have an understanding of their clients' legal rights and obligations. *See* Ex. 2 (Schell Tr. at 93:15-96:4).
- 44. Mr. Schell agrees that the legal matters of other Oklahomans may involve behaviors or views that he may not want to be associated with. *See* Ex. 2 (Schell Tr. at 89:1-5, 10-20); *see also* Ex. 1 (Johnson Decl. ¶ 31, Ex. G).
- 45. Notwithstanding that the legal problems of other Oklahomans may involve behaviors or views he does not wish to be associated with, Mr. Schell agrees those Oklahomans are entitled to competent legal representation and that their lawyers have a legal obligation to provide their clients with competent legal representation. *See* Ex. 2 (Schell Tr. at 89:6-9,16-90:2).
- 46. Mr. Schell agrees that the legal profession as a whole has an ethical obligation to provide legal services to any Oklahoma who seeks them, even if that person's legal dispute concerns an issue he finds distasteful or the person takes a position he disagrees with. *See* Ex. 2 (Schell Tr. at 88:12-19).
- 47. Mr. Schell has no knowledge of the Lexology news aggregation that the Second Amended Complaint alleges the OBA makes available to its membership, has no knowledge of having received it via email, and does not know its contents. *See* Ex. 2 (Schell Tr. at 76:12-77:9).
- 48. Mr. Schell, while general counsel for Unit Drilling Corp., published an article in the Sept. 2010 OBJ describing an oil and gas law he had lobbied for that was also supported by royalty owners and producers. *See* Ex. 2 (Schell Tr. at

- 70:12-22); Ex. 1 (Johnson Decl. ¶ 16 & Ex. C).
- 49. Given the context, Mr. Schell agrees that no one would conclude that his speech as expressed in his OBJ article would be construed as the speech of anyone. *See* Ex. 2 (Schell Tr. at 77:10-78:5).

### **Continuing Legal Education**

- 50. The OSC has superintending control of and established the requirements for for Continuing Legal Education ("CLE") and adopted Rules of the Supreme Court for Mandatory Continuing Legal Education. *See* Ex. 3 (Dep. Tr. John M. Williams ("Williams Tr.") at 22:1-11).
- 51. The OSC by Order entered January 17, 1986, effective March 1, 1986 established the MCLEC and adopted associated Rules for Mandatory Continuing Legal Education ("MCLE"). See Ex. 1 (Johnson Decl. ¶ 20, at p. 1\_& Ex. E (MCLEC Rule excerpts).
- 52. MCLE § Rule 7 contains Regulations for Mandatory Continuing Legal Education, which have since been amended. *See* Ex. 1 (Johnson Decl. ¶ 22 and Ex. E, at pp. 2-8).
- 53. MCLE § Rule 7, Regulation 3.6, approves attorney wellness and mental health topics as CLE ethics credits. *See* Ex. 1 (Johnson Decl. ¶ 22 & Ex. E, at p. 3).
- 54. The OSC presumptively accepts for credit any offering of the 89 bodies listed in MCLE § Rule 7, Regulation 4.2. *See* Ex. 1 (Johnson Decl. ¶ 22(c) & Ex. E, at p. 5-7).
- 55. It was reported to the ED by the company monitoring CLE hours reported by members to the OBA that, in 2024, MCLE approved 45,564.5 total CLE hours, 542 hours of which were provided by OBA CLE materials. *See* Ex. 1 (Johnson Decl. ¶ 23).
- 56. OBA policy provides that every CLE presented by the OBA shall contain the following disclaimer language:
  - **Disclaimer**: All views or opinions expressed by any presenter during the course of this CLE is that of the presenter alone and not an opinion of the Oklahoma Bar Association, the employers, or affiliates of the presenters unless specifically stated. Additionally, any materials, including the legal research, are the product of the individual contributor, not the Oklahoma Bar

Association. The Oklahoma Bar Association makes no warranty, express or implied, relating to the accuracy or content of these materials.

See Ex. 1 (Johnson Decl. ¶ 18).

- 57. OBA CLE presenters are instructed to read that disclaimer aloud to those present in every OBA CLE presentation. See Ex. 1 (Johnson Decl. ¶ 19)
- 58. Mr. Schell agrees that having a varied catalogue of courses for CLE credit was useful in that he could identify courses that helped him professionally or were interesting. *See* Ex. 2 (Schell Tr. at 58:10-12, 61:10-18, 63:5-20, 66:2-5).
- 59. Mr. Schell does not contend that the OBA violates his constitutional rights by accrediting an array of CLE courses that he may choose from. *See* Ex. 2 (Schell Tr. at 58:3-13;66:10-22).
- 60. The OBA has not forced Mr. Schell to take any particular CLE course. *See* Ex. 2 (Schell Tr. at 58:7-9).
- 61. Mr. Schell does not contend that offering an array of CLE courses violates his First Amendment rights. *See* Ex. 2 (Schell Tr. at 66:17-22).
- 62. Mr. Schell did not view the CLE courses set out in the Second Amended Complaint ("SAC"), nor did he take them for credit. *See* Ex. 2 (Schell Tr. at 72:15-73:4).

### Legislative Activity and Judicial Independence

- 63. Clayton Taylor, Jr., the OBA's legislative liaison, monitors bills pending in the legislative session related to access to justice and the Judicial Nominating Commission ("JNC"). Ex. 4 (Dep. Tr. Clayton Taylor, Jr. ("Taylor Tr.") at 27:14-25; 32:18-33; 45:1-16).
- 64. The OBA does not direct Mr. Taylor to speak with legislators; rather, he is tasked with finding out what is happening with a bill and does not get involved in drafting legislation. Ex. 4 (Taylor Tr. at 28:21-29:4).
- 65. Mr. Taylor prepares a chart of interesting bills before the State Legislature for the OBA Legislative Kick-off Day CLE; he selects bills he thinks lawyers might be interested in; his purpose is to help other lawyers be better lawyers; and the OBA does not direct him to include any specific bills. Ex. 4 (Taylor Tr. at 37:21-38; 71:25-73:19).

- 66. The OBA's Legislative Monitoring Committee monitors legislation to keep members informed of any potential changes in the law that might affect their practice. Ex. 3 (Williams Tr. at 29:2-19).
- 67. Mr. Schell disagrees with the present system for appointing judges in Oklahoma, and has lobbied for its change to one where the State Senate vets candidates and the Governor chooses a candidate. Ex. 2 (Schell Tr. at 53:12-54:6).
- 68. Mr. Schell believes and concedes that an independent judiciary is an important part of Oklahoma's governmental structure. Ex. 2 (Schell Tr. at 54:7-15; 55:9-14).
- 69. However, Mr. Schell does not think Oklahoma's judiciary is independent. Ex. 2 (Schell Tr. at 54:7-25; 55:4-23).

### II. PROCEDURAL POSTURE OF THE CASE

This action was filed March 26, 2019. See [Doc. No. 1]. An Amended Complaint ("AC") was filed May 19, 2019. See [Doc. No. 19]. Following dismissal and appeal, the Tenth Circuit Court of Appeals affirmed in part and remanded narrowly. See [Doc. No. 94]. The numerous determinations of that opinion are now the law of the case. See Rohrbaugh v. Celotex Corp., 53 F.3d 1181, 1183 (10th Cir. 1995) (citations omitted). On remand, Plaintiff filed a Second Amended Complaint ("SAC"). See [Doc. No. 116]. This Court dismissed all but one claim. See Order [Doc. No. 132]. Plaintiff's only remaining claim is a "First Amendment free association claim based on compelled speech." See id. at p.7. Claim III (challenging OBA's dues refund policy) is moot. See id. at p. 1; Schell v. Chief Justice & Justices of the Okla. Sup. Ct., 11 F.4th 1178, 1186 (10th Cir. 2021). Dismissal of Claim II (challenging dues as a condition of licensure) was affirmed on appeal. See [Doc. No. 132], at p.2; Schell, 11 F.4th at 1191.

### III. ARGUMENT AND AUTHORITIES

### A. Applicable Law

State bar associations may require attorneys to join and pay fees as a condition of licensure without violating first amendment rights against compelled speech and free association. See Lathrop v. Donohue, 367 U.S. 820, 843 (1961) (plurality opinion); Keller v. State Bar of Calif., 496 U.S. 1, 13-14 (1990). Provided, a state bar's political or ideological activity must be germane, that is, "necessarily or reasonably incurred for the purposes of regulating the legal profession or 'improving the quality of legal service available to the people of the State" Keller, 496 U.S. at 14 (quoting Lathrop, 367 U.S. at 843); Schell, 11 F.4th at 1192 (applying the germaneness standard as "the primary inquiry" to both freedom of speech and freedom of association claims). See also Pomeroy v. Utah State Bar, No. 2:21-CV-00219-TC-JCB, 2024 WL 1810229 at \*5 (D. Utah April 25, 2024) (if conduct is germane there is no free association or speech violation) (citing *Boudreaux* v. La. State Bar Ass'n, 86 F.4th 620, 628 (5th Cir. 2023).2 A state bar's assessment that there is a reasonable connection between its activity and these constitutionally permissible purposes is viewed with deference. See, e.g., Kingstad v. State Bar of Wisc., 622 F.3d 708,

<sup>&</sup>lt;sup>1</sup> Keller also requires state bars to maintain a dues refund policy ("Keller policy"). The OBA has satisfied this requirement. Its Keller policy was amended in March 2020 such that it "enshrined the spending safeguards Mr. Schell had alleged were compelled by the First Amendment." See Schell, 11 F.4th at 1186. Mr. Schell's dues challenge involving the Keller policy was dismissed as moot. See id.; see also [Doc. Nos. 81, 82].

<sup>&</sup>lt;sup>2</sup> The Supreme Court described "germaneness" as encompassing a spectrum of constitutional activity that would be left to the individual bar, but did identify each end – activities concerning lawyer discipline would be germane, while gun control advocacy would not. *Keller*, 496 U.S. at 16.

718-19 (7th Cir. 2010).

However, "[n]either *Lathrop* nor *Keller* addressed a broad freedom of association challenge to mandatory bar membership where at least some of a state bar's actions might not be germane to regulating the legal profession and improving the quality of legal services in the state." *Schell*, 11 F.4th at 1194 (citing *Keller*, 367 U.S. at 17). The express language of *Keller* frames this question as to whether attorneys may "be compelled to associate with an organization that engages in *political or ideological activities* beyond those [germane activities] for which mandatory financial support is justified under the principles of *Lathrop* and *Abood*." *Keller*, 496 U.S. at 17 (emphasis added). Circuit courts considering the issue have applied the germaneness analysis prescribed by *Keller*. *See also Schell*, 11 F.4th at 1192 (directing that the *Keller* germaneness test be applied as "the primary inquiry" to evaluate constitutionality should a freedom of association claim of the nature described as unresolved by *Keller* be determined to exist on remand).

The Tenth Circuit in this case recognized that the existence of some non-germane political and ideological state bar activity does not automatically require a conclusion that freedom of association rights had been violated. *See Schell*, 11 F.4th at 1195 (remanding for examination of two OBJ articles which, if determined to be non-germane, required an analysis of whether they were significant enough to state a claim).<sup>3</sup> The "potential open

<sup>&</sup>lt;sup>3</sup> Justice Brennan's opinion in *Lathrop* determined there was no violation of associational rights on the record because "[b]oth in purport and practice *the bulk of State Bar activities* serve the function, or at least so Wisconsin might reasonably believe, of elevating the educational and ethical standards of the Bar to the end of improving the quality of the legal service available to the people of the State ...." *Lathrop*, 367 U.S. at 843 (plurality opinion) (emphasis added). In ruling "the bulk of" bar activities in intent and practice were aimed

issue is to what degree, in quantity, substance, or prominence, a bar association must engage in non-germane activities in order to support a freedom-of-association claim based on compelled membership." *Schell*, 11 F.4th at 1195 n.11 (discussing *Lathrop*, 367 U.S. at 839, 843). *See, e.g., Pomeroy*, 2024 WL 1810229 at \*5 ("court declines to follow the Fifth Circuit's approach" in *Boudreaux*, 86 F.4th at 636-37).

Accordingly, the Court's first task is to determine whether the challenged political or ideological speech *of the OBA* is germane. This necessarily includes the inquiry whether the speech is that of the OBA, and/or whether a reasonable person would attribute the challenged speech to the Plaintiff. Next, if the Court were to determine some conduct is non-germane, it must be determined whether it is of a "degree, in quantity, substance, or prominence" to support a first amendment claim. *See Schell*, 11 F.4th at 1195 n.11.

B. Mr. Schell's Freedom of Association by Compelled Speech Claim Fails Because The Challenged Conduct Is Germane As It Is Necessarily and/or Reasonably Incurred For The Purpose of Regulating the Legal Profession and/or Improving the Quality Of Legal Services Available To The Public and/or Is Otherwise Constitutional.

Mr. Schell largely complains that bar activities involve political or ideological concepts that he disagrees with. But that is not the test. *Keller* <u>allows</u> speech that is ideological or political as long as it is germane, that is, necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services. *See Keller*, 367 U.S. at 13-14.

at constitutional practices, Justice Brennan implicitly recognized that Bar activity could be constitutional even if some smaller portion of the activity were not so aimed and as a result,

was non-germane.

### Oklahoma Bar Journal

The OBA publishes the OBJ. (SUF ¶ 17) Plaintiff's compelled speech claim in the SAC rests substantially on seven<sup>4</sup> articles and other items appearing in the OBJ. Plaintiff's counsel also examined OBA witness John M. Williams about an eighth article from May 2020. While not alleged in the SAC, Defendants discuss it here to show it is germane. These eight challenged OBJ articles do not infringe Mr. Schell's first amendment rights on several independent grounds.

1. No reasonable observer would believe the challenged OBJ articles were Mr. Schell's speech simply because he is a licensed Oklahoma lawyer.

Mr. Schell's association and compelled speech claims fail because no reasonable observer would believe that he agrees with every statement of the OBA (assuming arguendo the speech challenged is that of the OBA) simply because he is a licensed member. *See Lathrop*, 367 U.S. at 859 (Harlan, J., concurring).

In fact, while employed as general counsel for Unit Drilling Corp., Mr. Schell

<sup>&</sup>lt;sup>4</sup> Mr. Schell's OBJ-related allegations rest almost entirely on seven articles in the SAC at ¶¶ 78, 81, 84, 85, 86, 87 and 88. See SAC at ¶¶ 54-55, 65-77, allegations which pre-date the statute of limitations and are therefore barred. Schell, 4 F.4th at 1191 ("only allegations occurring on or after March 26, 2017, fall within the statute-of-limitations period"), and id. at 1192 & n. 7 (noting time barred allegations). Next, SAC at ¶¶ 79-80, 82-83 reference articles already determined to be germane. See id. at 1193. Notably, those legislative activity related allegations in the AC the Tenth Circuit deemed "lack[ing] the level of specificity necessary to advance a First Amendment claim," id. at n.8, were included word for word by Mr. Schell in the SAC at ¶¶ 56-57. Legislative adjacent allegations added by Mr. Schell to the SAC concern activity deemed germane by the Tenth Circuit. See SAC at ¶¶ 58-60. Finally, SAC ¶¶ 64, 89, 90 have not developed past the bare allegation pleading stage and cannot move forward. See Celotex Corp. v. Catrett, 477 U.S. 317, 325-26 (1986) (discussing import of last two sentences of FED. R. CIV. P. 56(e), namely, that a party cannot oppose a proper dispositive motion by pointing to its pleadings).

published an article in the Sept. 2010 OBJ. See (SUF ¶ 48). He testified that, given the context, no one would conclude that his speech was that of anyone else. See (SUF ¶ 49). Consequently, Mr. Schell agrees with Justice Harlan, whose concurrence in Lathrop incorporates the common-sense reasoning of the Wisconsin Supreme Court that bar members such as Plaintiff "can be expected to realize" that the "everyone understands or should understand' that the views expressed are those 'of the State Bar as an entity separate and distinct from each individual." See Lathrop, 367 U.S. at 859 (Harlan, J., concurring, Frankfurter, J. joining) (quoting In re Integration of the Bar, 93 N.W.2d 601, 603 (Wis. 1958)).

"Whether a reasonable observer will attribute any meaning to 'membership' alone depends on the nature of a group." *Crowe v. Or. Bar*, 112 F.4th 1218, 1236 (9th Cir. 2024) (comparing membership in a political party—the bare membership in which sends an expressive message—with membership in an entity like a public library or Costco, which "may not send any message at all"). As Mr. Schell acknowledges, "[w]hether a reasonable observer will attribute any meaning to [] memberships [like a state bar] will depend on context, and there may plausibly be circumstances where membership in a group becomes expressive." *See id.* However, "the bare fact that an attorney is a member of a state bar does not send any expressive message." *Id.* 

In *Crowe*, the Ninth Circuit examined a number of Oregon State Bar ("OSB") statements challenged under the same broad association claim at issue here. The court opined that "a reasonable observer understands state bar membership to mean only that the attorney is licensed by the bar. Thus, even when the bar engages in expression, a reasonable

observer ordinarily would not interpret the fact the attorney is a member of the bar to mean that the bar's activities reflect the attorney's personal views." *Id.* And so, the court determined most of the challenged bar statements, in their context, would not be attributable to all members by a reasonable observer. *See id.* at 1236.

However, certain OSB speech criticizing conduct of the then-incumbent U.S. President in a statement explicitly endorsed by the bar, published with a bolded border emphasizing the content, and accompanied by language implying that it was a statement all members supported—this political and ideological statement was placed in a context that communicated to a reasonable observer that it expressed the opinion of all bar members. As such, it was not germane. *See id.* at 1236-37, 1239-40.

Given the content and context of the OBJ articles Mr. Schell challenges, no reasonable observer would attribute them to Mr. Schell. *See Crowe*, 112 F.4th at 1236. But even so, the challenged statements are germane, so constitutional even if ideological or political. *See Keller*, 496 U.S. at 17.

### 2. The challenged OBJ articles are germane.

The challenged articles are germane for several reasons. First, the challenged OBJ articles contain educational material that allow lawyers to retain the competence required by governing rules. The OSC adopted the ORPC, which govern lawyers licensed to practice in the State, a power Plaintiff does not dispute the OSC possesses. *See* (SUF ¶ 51). The ORPC's Preamble provides lawyers "should seek improvement of the law, access to the legal system, the administration of justice and the quality of legal serve rendered...." *See* (SUF ¶ 35). Moreover, the ORPC require competence and that lawyers monitor changes in

the law and law practice. See (SUF ¶¶ 37, 38).

OBJ articles provide information to lawyers that allow them to acquire and maintain the legal knowledge and skill required by the ORPC. Mr. Schell agrees that all lawyers must be competent in areas in which they practice and can do so by reading articles in the OBJ, including ones that discuss updates or changes in the law, the history and development of laws, or describe how existing laws may be unequally applied to different groups of Oklahomans. *See* (SUF ¶¶ 41,42).

In considering a challenge to the Texas Bar Journal ("TBJ"), the Fifth Circuit concluded that similar information it published was "related to regulating the profession and improving legal services" and thus germane. *See McDonald v. Longley*, 4 F.4th 229, 252 (5th Cir. 2021). Likewise, the challenged OBJ articles contain material that allow lawyers to retain the competence required by the ORPC. As such they are "necessarily or reasonably incurred for the purposes of regulating the legal profession or 'improving the quality of legal service available to the people of the State." *See Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843).

### a. April 17, 2017, Vol. 88, No. 11 Column "From the ED"

Here, the then ED's opinion column discussed how Art. 7B § (a)(2) of the Oklahoma Constitution was being implemented with regard to the functioning of the JNC. See [Doc. No. 116-1] at 1. Noting "[t]he work of the JNC is critical to maintaining a fair and impartial judicial system that is free from partisan politics in the selection of judges and justices of our highest courts," he encouraged any lawyer interested in running for a vacant judicial office to view the notice setting out how judicial candidates are selected. See id. Next, Mr.

Williams identified bills in the Oklahoma legislature that related to the JNC, noting that similar bills seeking to change Oklahoma's JNC-based judicial selection process had been common. *See id.* Finally, Mr. Williams reminded readers that the JNC had been adopted in response to the harms of politics in the judicial system, exemplified by the mid-20th Century bribery and corruption scandal involving part of the State's highest civil court, and adjured readers to contact their state legislators to express their personal opinions on the matter. *See id.* at 2.

The content of this column in no way infringes Mr. Schell's first amendment rights. First it is plainly Mr. Williams' opinion, and he encourages readers to express their opinions (not his) to their legislators. See id. ("If you have not contacted your legislators and given them your opinion...I encourage you to do so."). But even if viewed as the OBA's expressive content, an "article encouraging members of the OBA to warn the public about the harms of politics in the judicial system .... is germane because the judicial system is designed to be an apolitical branch of government, and promotion of the public's view of the judicial system as independent enhances public trust in the judicial system and associated attorney services." See Schell, 11 F.4th at 1193. Likewise, articles "responding to criticism of Oklahoma's merit-based process for selecting judges.... involve[] the structure of the court system and fall[] within those activities accepted in Lathrop and Keller." See id.; see also Order [Doc. No. 132] at 4 ("articles or statements made by the OBA or its leadership about judicial selection procedures....no doubt involve contentious political issues but, as the Court of Appeals noted, they involve the structure of the court system and are" germane).

### b. Nov. 2018 article "Tort Litigation for the Rising Prison Population"

This article appeared in a tort practice area-themed OBJ. *See* [Doc. No. 116-2] at 1, 34. Noting Oklahoma's rising prison population, the author highlighted then-Director of Corrections' concerns that, given the poor state of many corrections facilities, inmates would be forced to resort to tort lawsuits to obtain redress. *See id.* at 34. The author then describes what tort remedies are available to inmates under state law, where such remedies are restricted and how they have evolved over time legislatively and judicially. *See id.* at 34-35. In closing, the author reminds his readers that inmates are their fellow citizens and characterizes an OSC decision as "courageous." *See id.* at 37.

This article guides lawyers who may represent inmates in tort actions to the applicable law in that practice area and its history, and is accordingly reasonably related to "improving the quality of legal service available to the people of the State." *See Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843). Mr. Schell concedes that every citizen of the state deserves competent representation, even those citizens with whom he might not wish to associate. *See* (SUF ¶¶ 39, 44-45). He agrees that pertinent legal history is appropriate. *See* (SUF ¶ 41). The OSC requires lawyers to maintain competency in their area of practice areas as a matter of professional responsibility, to maintain their licensure. *See* (SUF ¶¶ 37, 38). This article points out that inmates are citizens entitled to legal representation, aids practitioners working in the area in their competence, and therefore is reasonably related to the goals recognized as germane in *Lathrop* and *Keller*.

## c. Dec. 2020 article "A Resilient Mindset: Take Stock of What You Lost and What You Gained to Move Forward"

This article addresses how to develop a resilient mindset to overcome personal and professional setbacks, and was included in an OBJ featuring articles related to wellness. See [Doc. No. 116-5] at 1. The article is centered on the author's personal correspondence with her client, also an attorney, whose ability to cope with the impact of the 2020 pandemic lockdown inspired the author to develop the same tool—a resilient mindset—to overcome stress related to personal and professional setbacks. See id. at 2-3. The author offers steps her readers might want to consider: "If You Would Like to Begin Cultivating a Resilient Mindset Right Now, Try This[.]" See id. at 4-6. This article plainly offers the author's personal experience as a guide to those readers who have interest. No reasonable person would consider this article the speech of anyone other than the author. Even if it were OBA speech, it would be germane as it is reasonably related to "improving the quality of legal service available to the people of the State." See Keller, 496 U.S. at 14 (quoting Lathrop, 367 U.S. at 843). Cf. Boudreaux, 86 F.4th at 632-33 (wellness information too remote), but see (SUF ¶ 53) (MCLEC recognizes wellness CLE topics).

### d. May 2021 – "Guinn v. the U.S.: States' Rights and the 15th Amendment"

This challenged article was contained in the May 2021 OBJ issue themed "Black Legal History in Oklahoma." *See* [Doc. No. 116-6] at 1. The author sets out the history of Oklahoma voting laws primarily as they impact the access of African American citizens to the ballot box and describes challenges to such laws culminating in the opinion *Guinn v*. *U.S.*, 238 U.S. 347 (1915). The author identified recent legislation impacting voter

registration, thereby educating lawyers who might represent clients with legal needs related to voting laws. Even if this article could be considered OBA speech, it would be germane as it is reasonably related to "improving the quality of the legal service available to the people of the State." *See Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843). While views may differ as to voter registration legislation, the Supreme Court held that ideological speech is not a first amendment violation if the speech meets the test for germaneness. *See id.* at 13-14.

### e. May 2021 – "Oklahoma's Embrace of the White Racial Identity"

Like the foregoing article, this piece was included in the May 2021 OBJ issue themed "Black Legal History in Oklahoma." See [Doc. No. 117-7] at 1. It plainly expresses an author's opinion as it uses personal language such as "I hope...." See id. at 5. Additionally, "promoting diversity efforts at law firms is germane..." See Boudreaux, 86 F.4th at 633. For instance, initiatives to diversify the legal practice are germane "despite [their] controversial and ideological nature." See id. (quoting McDonald, 4 F.4th at 249). If the action is "tied to the diversity of *lawyers*," it is likewise "tied to the quality of legal services." See id. (emphasis in the original). This Court agreed. See Order [Doc, No. 132] at 4 (article addressing racial factors believed to contribute to lack of diversity in law firms was germane). In *Boudreaux*, the court concluded that the publication of a link to an article about gay rights along with a rainbow flag icon during LGBT Pride Month was not germane for several reasons. First, the statement about Pride Month was a "general statement" not specific to lawyers. See id. at 636. Second, the gay rights article was similarly generic. Finally, "[n]either the article, the LSBA's icon promoting the article, nor

the surrounding context draws a link between the interests of 'LBGT causes' in society writ large and the improvement of legal practice in this state." *See id*.

By contrast, the racial identity article, while providing a history of Caucasian westward expansion into what later became Oklahoma, provides the percentage racial composition of the State and ties it directly to racial diversity in the OBA. The authors note that although the percentage of minorities attending the State's law schools meets or exceeds the percentage of minorities in the population, minorities hold far fewer positions in major law firm leadership, the judiciary and law school faculties. The authors question whether the lack of minority representation is beneficial to the "administration of the laws." To be sure, some readers might feel that the authors' views are controversial and ideological. However, unlike the "generic" gay rights history article at issue in *Boudreaux*, the racial identity article promotes increasing racial diversity in the Bar, an unquestionably germane goal.

### f. February 2022 – "Vaccine Mandates and Their Role in the Workplace"

This challenged article was included in the February 2022 OBJ issue themed "Labor & Employment." See [Doc. 116-8] at 1. The article educates human resources practitioners of developments in vaccination mandates (and mandate exemptions) that emerged during the Covid pandemic through executive orders and Food and Drug Administration Guidance. See id. The author prepares attorneys who advise employers who and employees as to the rapidly changing law on what was at the time a rapidly developing new frontier of labor employment law. Even if this article could be considered OBA speech, it would be germane as it is reasonably related to "improving the quality of legal service available

to the people of the State." See Keller, 496 U.S. at 14 (quoting Lathrop, 367 U.S. at 843).

### g. May 2022 – Backpage – "A Silent History"

The challenged piece is a book review setting out the theme and publication history of Oklahoma historian Angie Debo's 1940 book, *And Still the Waters Run. See* [Doc. No. 116-9] at 1; SAC ¶ 88. It plainly expresses the viewpoint of the reviewer. *See* [Doc. No. 116-9]. Further, a book detailing the history of Native American land transfers is a useful educational tool for an OBA member handling resulting issues such as land titles.

### h. May 2020 – "Representing Transgender and Gender-Diverse Clients"

Mr. Schell did not challenge this article in the SAC but his counsel addressed it in Mr. Williams' deposition, so Defendants address its germaneness. See (SUF ¶ 44). After explaining her personal experience at a conference on the topic, the author states "[i]t is my hope that this article will be informative and helpful as to LGBT terminology and issues our clients may be facing in this emerging and rapidly changing area of the law." See (SUF ¶ 44), and Ex. 1 (Johnson Decl. ¶ 31 and Ex. G, at p.1). She then discussed "historical notes" and "representation issues." See id. Mr. Schell concedes that history of the law is pertinent to competence, and that his fellow Oklahomans are entitled to competent representation even if he disagrees with their legal issues. See (SUF at ¶¶ 40-41, 45). Whether one's client is an oil and gas company or a gender-diverse person, both are entitled to competent representation. This article plainly is aimed at the goal of educating lawyers who represent clients facing legal issues and is germane under Keller.

# 3. The challenged OBJ articles cannot be considered in support of a first amendment claim as they are not OBA speech.

Second, because the OBJ plainly communicates via disclaimer that the published speech is not the OBA's speech, (SUF ¶29-31), the challenged articles cannot be considered in support of Plaintiff's compelled speech claim. *See McDonald*, 4 F.4th at 252. In *McDonald*, the Fifth Circuit determined that the TBJ, which "purports to feature articles advancing various viewpoints" and "[e]ach issue includes a disclaimer clarifying that the Bar does not endorse any views expressed therein," "suffices under *Keller*." *See id. See also Crowe*, 112 F.4th at 1240 ("even if OSB does engage in nongermane activities, in situations in which those activities might be attributed to its members it could include a disclaimer that makes clear that it does not speak on behalf of all those members").

Since mid-2022, the foot of every page of every article in the paper OBJ contains a disclaimer. *See* (SUF ¶¶ 30-31), and every OBJ also contains a disclaimer on the masthead page (SUF ¶29). The OBJ's accessible via the OBA website also contain the disclaimer. (SUF ¶ 30-31). As none of the articles or advertisements published in the OBJ are OBA speech, their content cannot be used to support a freedom of association claim.

### **Continuing Legal Education**

Plaintiff alleges "[t]he OBA also approves [CLE] programming of a political or ideological nature." See SAC, ¶ 92. The SAC points to three CLE programs that "on information and belief" were "approved or otherwise promoted by the OBA" and allegedly contained ideological content. See id. at ¶¶ 92-94. Plaintiff failed to develop these bare allegations with proof. Even if he had, Defendants are entitled to judgment on Plaintiff's

allegations relating to CLE.

The OSC established CLE requirements by adopting Rules of the Supreme Court for MCLE, which contain standards requiring that a CLE's "primary objective must be to "increase the participant's professional competence as an attorney." *See* (SUF ¶ 51) and Ex. 1 (Johnson Decl. ¶ 51 and Ex. E, at p. 4) (Reg. 4.1.2). Professional competence, the primary CLE content standard set by the OSC, mirrors § Rule 1.1 of the ORPC adopted by the OSC, which also requires competence. *See* (SUF ¶¶ 37-38).

Plainly, any course accepted by the MCLEC or OBA to satisfy CLE requirements is germane because the governing authority requires CLE to further the purpose of regulating the profession and improving the quality of legal services offered to the public. *See McDonald*, 4 F.4th at 251 ("The Bar's ... CLE offerings help regulate the legal profession and improve the quality of legal services....[in that they] assist attorneys in fulfilling requirements designed to ensures that they maintain the requisite knowledge to be competent practitioners.").

Further, Plaintiff has conceded a diverse catalogue of CLE courses approved for credit in Oklahoma assisted him in finding programs that were interesting intellectually or pertinent to his work and does not contend that having an array of CLE courses to choose from violates his first amendment rights. *See* (SUF ¶¶ 58-59).

That some of the score of CLE offerings accepted by the MCLEC or OBA to satisfy any OBA member's CLE requirements might be considered ideologically pitched is inconsequential because *Keller* holds that ideological speech does not violate the first amendment when it is germane. *See Keller*, 496 U.S. at 13-14.

As the *McDonald* court explained when brushing aside the same complaint against the Texas State Bar, while the offerings "probably" carried an ideological bent:

....[T]hat is not the test under *Keller*. And moreover, any objectionable CLE ...offerings are only one part of a large, varied catalogue, and the Bar includes disclaimers indicating that it is not endorsing any of the views expressed. That is enough to satisfy *Keller*.

*Id.* at 251-52.

Finally, OBA CLE presentations are not OBA speech, as the materials contain a written disclaimer, (SUF ¶ 56), and every OBA CLE presenter is instructed to read the disclaimer in every CLE presentation. (SUF ¶ 57). The CLE materials are not OBA speech but if they were, they would reasonably relate to *Keller*-approved constitutional activity.

### **Legislative Allegations**

The Tenth Circuit determined that all AC allegations concerning legislative adjacent activity were either directed at germane conduct or inadequately pleaded. *See Schell*, 11 F.4th at 1193 n.8; *see also* n. 4 *supra*. The two new SAC legislative related allegations, at SAC ¶¶ 60-63, were determined by this Court to fail the 12(b)(6) standard "at this point" and not to "translate into any basis for claim that the court can discern." *See* Order [Doc. No. 163] at 4-5. Even after discovery, there is no support for a constitutional violation.

Reaching out to state legislators so they might "obtain information on the legal and practical effect of some of the proposed legislation[,]" see SAC [Doc. No. 116] at ¶ 59, is germane as the Tenth Circuit determined OBA activity was constitutionally sufficient were it "promote[d] the important role of the OBA's attorney members in using their professional skills to interpret and advise on pending legislation." See Schell, 11 F.4th at

1193.

Likewise, the SAC allegation that the OBA "held its annual 'Day at the Capitol" in February 2022 where it 'handed out letters to legislators' 'explaining that the OBA is a nonpartisan association' and noting that the OBA 'does not receive any appropriations from the Legislature []" and "offered 'to be a resource' to legislators if they wanted information on bills[,]" *see* SAC [Doc. No. 116] at ¶ 60, concern conduct that has been found by the appellate court to be germane, as set out above. *See Schell*, 11 F.4th at 1193. The allegations concerning the structure of the court system and the JNC, SAC [Doc. No. 116] at ¶ 61-62, have been determined germane. *Schell*, 11 F.4th at 1193 n.8.

Further, Clayton Taylor, Jr., the OBA's legislative liaison, limits his OBA-related work at the legislature to pending bills related to access to justice and the JNC. *See* (SUF ¶¶ 63-64). Again, these areas of activity have determined to be germane activities. *See Schell*, 11 F.4th at 1193 n.8.

### Lexology

The SAC at ¶ 91 alleges that the "OBA permits its banner or logo to be displayed on online news aggregators such as 'Lexology' thereby placing its imprimatur on political, ideological, and 'non-germane' content provided to those that register for the service." *See* [Doc. No. 116] at 16. Mr. Schell testified he knows nothing about the Lexology service, has no knowledge of having received it, and does not know its contents. *See* (SUF ¶ 47). He lacks standing to address this issue. *See Bear Lodge Multiple Use Ass'n v. Babbitt*, 175 F.3d 814, 821-22 (10th Cir. 1999) (citations omitted) (where plaintiff has no injury, there is no standing).

## C. The OBA'S Conduct Complies with the First Amendment Because Any Incidental Non-Germane Activity is *De Minimis*.

Even if this Court determines that within the limitation period there was an instance of non-germane conduct, Mr. Schell's claim fails because the scant allegations are *de minimis*. The Tenth Circuit recognized that the existence of some non-germane state bar activity does not automatically require a conclusion that freedom of association or speech rights had been violated. *See Schell*, 11 F.4th at 1195. The "potential open issue is to what degree, in quantity, substance, or prominence, a bar association must engage in nongermane activities in order to support a freedom-of-association claim based on compelled membership." *Schell*, 11 F.4th at 1195 n.11 (discussing *Lathrop*, 367 U.S. at 839, 843). *See also Crowe*, 112 F.4th at 1240 n. 12; *Pomeroy*, 2024 WL 1810229 at \* 5, (citing *Schell*, 11 F.4<sup>th</sup> at 1185 n.11) (the "Tenth Circuit...left open the possibility that a deminimis amount of non-germane speech would not run afoul of an objecting member's associational rights").<sup>5</sup>

Here, Mr. Schell identifies eight OBJ articles and vaguely refers to three CLE programs that he asserts violate his first amendment rights. To put these claims in perspective, during the period from March 26, 2017 (the limitation date) to June 10, 2022 (filing date of SAC), the OBA published 53 issues of the OBJ, containing approximately 643 published, authored items. *See* (SUF ¶ 27). Even if all eight of the articles Mr. Schell

<sup>&</sup>lt;sup>5</sup> Unlike the Tenth Circuit in *Schell*, the Ninth Circuit in *Crowe*, and Justice Brennan's opinion in the *Lathrop* plurality, the Fifth Circuit has declined to recognize that a *de minimis* amount of non-germane activity would avoid a constitutional violation. *See Boudreaux*, 86 F.4th at 637-38 ("we decline to recognize a *de minimis* exception to the rule from *Keller* and *McDonald*").

challenges were non-germane, which is clearly not the case, 6 they represent an estimated 1.24% of the approximated total authored articles published in the OBJ during the relevant time frame. When considering CLE offerings approved for credit, the numbers are even more striking. From Jan. 1, 2024 to the present date, the MCLEC approved for OBA member credit approximately 9,427 CLE programs. See (SUF ¶ 28). 7 Given that the period in dispute covers five years (March 2017-June 2022), and that other courses were inevitably approved prior to Jan. 1, 2024, the number of approved courses would be substantially larger, diminishing further the three courses Mr. Schell protests in vague terms. The Tenth Circuit identified the "potential open issue [as] to what degree, in quantity, substance, or prominence, a bar association must engage in non-germane activities in order to support a freedom-of-association claim based on compelled membership." See Schell, 11 F.4th at 1195 n.11. The degree and quantity of the challenged conduct is unquestionably small. The prominence is virtually nonexistent given the numbers above. In both prominence and substance, the challenged activity differs dramatically from the statement strongly critical of the U.S. President found to violate the first amendment in Crowe, which was boxed and bolded, and surrounded by language the court took to impute the statement to all OSB members. See Crowe, 112 F.4th at 1236-37, 1239-40. Here, Defendants have shown that the challenged conduct is not reasonably

<sup>&</sup>lt;sup>6</sup> And assuming *arguendo* they are OBA speech that could be reasonably understood to be Plaintiff's.

<sup>&</sup>lt;sup>7</sup> The OSC also presumptively accepts for credit any offering of the 89 bodies listed in MCLE § Rule 7, Regulation 4.2, which are not likely all captured in this number. *See* (SUF ¶¶ 54).

imputed to Mr. Schell, while it is reasonably related to *Keller*-approved constitutional goals even if it could be considered ideological. Measuring the challenges against the CLE catalogue, the array of OBJ articles during the pertinent period, or all OBA activity, it is plainly *de minimis*, and there is no constitutional violation. *See Schell*, 11 F.4th at 1195 n.11.

### IV. CONCLUSION

There is no genuinely disputed material fact preventing judgment in favor of Defendants. *See Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 249 (1986) (citations omitted).

WHEREFORE, for the reasons stated, Defendants respectfully request that they be granted summary judgment on Plaintiff's sole remaining claim, that judgment be entered in their favor, and that they be awarded all other relief to which they may be justly entitled.

### Respectfully submitted,

### /s/ *Heather L. Hintz*

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ATTORNEYS FOR DEFENDANTS, THE CHIEF JUSTICE AND JUSTICES OF THE OKLAHOMA SUPREME COURT, NAMED

IN THEIR OFFICIAL CAPACITIES

## EXHIBIT 1

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MARK E. SCHELL,	)
Plaintiff,	)
v.	) Case No. CIV-19-0281-HE
JANET JOHNSON, et al.,	)
Defendants.	)

## DECLARATION OF JANET JOHNSON, EXECUTIVE DIRECTOR OF THE OKLAHOMA BAR ASSOCIATION, IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

- I, Janet Johnson, Executive Director of the Oklahoma Bar Association ("OBA"), affirm the following to be true, upon information and belief, under penalties of perjury:
- 1. I am an attorney licensed to practice law in the State of Oklahoma and am Executive Director of the OBA. I am fully familiar with the facts and circumstances set forth herein based upon my participation in this case as a defendant, named in my official capacity, and as Executive Director of the OBA.
- 2. This Declaration is submitted in support of the Defendants' Motion for Summary Judgment and supporting Brief filed in the above captioned action.
- 3. I began my career at the OBA on June 15, 2020 as the Director of Educational Programs. On January 1, 2023 I became the OBA Executive Director.
- 4. The Oklahoma Supreme Court adopted the Rules Creating and Controlling the Oklahoma Bar Association ("RCAC"). *See* Ex. A (a true and correct copy of excerpts from the RCAC).

- 5. The RCAC state, among other things, that "[s]ubject to these rules, the Association may adopt such Bylaws as it may deem necessary for its government and for the implementation of these rules." *See id.* RCAC, Art. XV, § 15.
- 6. The OBA Board of Governors ("BOG") has adopted Bylaws. *See* Ex. B (a true and correct copy of excerpts of excerpts from the Bylaws).
- 7. The OBA publishes the Oklahoma Bar Journal ("OBJ") pursuant to the authority of the OBA Bylaws. *See id.* at § Art VII.
- 8. The primary purpose of the OBJ is to provide a forum for information on the practice of law, to educate lawyers in their practice areas and updates in the law, and to provide practitioners OBA-related notices and information.
  - 9. The OBJ accepts advertisements to defray the cost of publication.
- 10. Until a point in 2022, OBA published nine OBJ issues annually seven issues were practice-themed bar journals and two were general-practice themed, for a total of nine annual publications.<sup>1</sup> At a point in 2022, the OBA began publishing ten issues annually, all of which are practice-area specific. The monthly theme of each of the practice-themed bar journals, from and including March 2017 through the present, is designed to address an area of the law in which an OBA member might practice (appellate law, family law, oil and gas law, and the like). The general practice-themed OBJ issues, which are presently

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<sup>&</sup>lt;sup>1</sup> The OBA also publishes an OBJ publication called "Courts & More", which is only available digitally. It contains newly decided decisions of the Oklahoma Supreme Court, the Oklahoma Court of Criminal Appeals, and the Oklahoma Court of Civil Appeals. Courts & More publications also contain information about OBA governance, and other information that impacts the practice of law in the State.

not published, also contain articles about the practice of law but those articles were not related to one practice area.

- 11. All themed OBJ issues contain a message from the President of the Board of Governors ("BOG") and most contain a message from the Executive Director both such statements are intended and designed to be personal statements of those individuals, and are not official OBA statements. The BOG President's statement generally contain the personal leadership statements and goals of the current President.
- 12. Every issue of the nine (now ten) annual practice-themed OBJs contains a disclaimer of the following substance on the masthead page:

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2025 Oklahoma Bar Association. Statements or opinions expressed in the Oklahoma Bar Journal are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors. Information about submissions can be found at www.okbar.org.

- 13. The foregoing disclaimer in substance appeared in every OBJ issue attached as an exhibit to the Second Amended Complaint filed in the above captioned action.
- 14. The OBA publishes the OBJ in paper and digital formats. It is the policy of the OBA that the disclaimers appear in both formats.
- 15. The OBJ Board of Editor submission guidelines state in part that "Practical, 'how to' articles that would benefit attorneys in their practice of law are especially

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encouraged. If you have an idea or need a suggestion for writing an article for an upcoming theme issue that features practice area articles, contact the editor."

- 16. Mark E. Schell, Plaintiff in the above captioned action, was co-author of a published article in the Sept. 2010 OBJ. *See* Ex. C (a true and correct copy of such article).
- 17. Since mid-2022, it is the policy of the OBA that every OBJ has included the following disclaimer<sup>2</sup> on the footer of each page of every practice-themed OBJ article, which disclaimer is to appear in both the paper form of the OBJ and the pdf form of the OBJ (which are accessible on the OBA website):

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

On the OBA website, there are also clickable links to digital copies of each issue's individual practice-themed articles. In this format, the entire article presents as one page, such that the foregoing disclaimer appears at the end of the article.

18. It is the policy of the OBA that every CLE presented by the OBA contains the following written disclaimer text<sup>3</sup>:

**Disclaimer**: All views or opinions expressed by any presenter during the course of this CLE is that of the presenter alone and not an opinion of the

2

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

3

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

Oklahoma Bar Association, the employers, or affiliates of the presenters unless specifically stated. Additionally, any materials, including the legal research, are the product of the individual contributor, not the Oklahoma Bar Association. The Oklahoma Bar Association makes no warranty, express or implied, relating to the accuracy or content of these materials

See, for example, Ex. D (Screenshot of an exemplar OBA CLE presentation).

- 19. It is the policy of the OBA that OBA CLE presenters are instructed to read the foregoing disclaimer aloud to those present, in every presentation.
- 20. The Oklahoma Supreme Court by Order entered January 17, 1986, effective March 1, 1986, established a Mandatory Continuing Legal Education Commission ("MCLEC") and adopted associated Rules for Mandatory Continuing Legal Education ("MCLE"), which have since been amended, in the same Order. *See* Ex. E ( a true and correct copy of excerpts from the Rules for MCLE).
  - 21. As OBA Executive Director, I am an ex officio member of the MCLEC.
- 22. Rule 7 of the Rules for MCLE adopted by the Supreme Court contains Regulations for Mandatory Continuing Legal Education, which have since been amended. *See id.* at § Rule 7.
  - a. Regulation 3.6, among other things, adopts programming Guidelines for Legal Ethics and Professionalism CLE. It provides in part:
    - "Legal Ethics and Professionalism CLE programs will address the Oklahoma Rules of Professional Conduct and tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, fairness, competence, ethical conduct, public service, and respect for the Rule of Law, the courts, clients, other lawyers, witnesses and unrepresented parties. Legal Ethics and Professionalism CLE may also address legal malpractice prevention and mental health and substance use disorders."

and

"Mental Health and Substance Use Disorders programs will address issues such as attorney wellness and the prevention, detection and/or treatment of mental health disorders and/or substance use disorders which can affect a lawyer's ability to provide competent and ethical legal services."

See id. at § Rule 7, Regulation 3.6.

- b. Regulation 4 contains the standards that govern approval of continuing legal education programs by the MCLEC. *Id.* at Rule 7, Regulation 4.
- c. Regulation 4.2 lists 85 organizations whose continuing legal education programs are presumptively approved for credit. *Id.* at § Rule 7, Regulation 4.2.
- 23. At my request, it was reported to me by the company monitoring CLE hours reported by members to the OBA that, in 2024, MCLE approved 45,564.5 total CLE hours, 542 hours of which were provided by OBA CLE materials.
- 24. From March 2017 through June 2022, the OBA published 53 editions of the OBJ, which contained approximately 643 published authored articles, not limited to practice-themed articles. This approximate figure includes the BOG President and Executive Director columns, Practice Tips, Back Page, Legal Practice Tips, Ethics & PR, Young Lawyers Division, and other authored items.
- 25. For the period January 1, 2024 to the present, a review of the MCLEC website reveals the MCLEC approved approximately 9,427 CLE programs from which a bar member may choose to satisfy their 2024 annual MCLEC requirements.

- 26. The OBA has had a *Keller* policy for dues refunds in place for years preceding the filing of the above-captioned litigation. The original policy was drafted with the assistance of University of Oklahoma Law Professor Rick Tepker. The policy was last amended by the BOG in March 2020.
- 27. The Oklahoma Supreme Court adopted the Rules for Professional Conduct ("ORPC"), which provide, among other things, that it is misconduct for a lawyer to violate or attempt to violate the RPC. *See* Ex. F (a true and correct copy of excerpts from the ORPC), and § Rule 8.4(a).
- 28. The ORPC Preamble provides in part that "As a public citizen, a lawyer should 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 a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority...." *Id.* at § Preamble: A Lawyer's Responsibilities, § (6).
- 29. The ORPC further provides that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See id.* at § Rule 1.1 (Competence).

30. With regard to "Maintaining Competence," the RPC further provide in

Comment 6 to Rule 1.1 that "[t]o maintain the requisite knowledge and skill, a lawyer

should keep abreast of changes in the law and its practice, engage in continuing study and

education and comply with all continuing legal education requirements to which the lawyer

is subject, including the benefits and risks associated with relevant technology." Id. at §

Rule 1.1, Comment (6).

31. Exhibit G is a true and correct copy of an article appearing in the May 2020

OBJ.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing

is true and correct to the best of my knowledge, information, and belief.

Dated: April 29, 2025

Respectfully submitted,

JANET JOHNSON

# DECLARATION EXHIBIT A

Cite as: O.S. §, \_\_\_\_\_

In the public interest, for the advancement of the administration of justice according to law, and to aid the courts in carrying on the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereto; to prevent the unauthorized practice of law; to encourage the formation and activities of local bar associations; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof, may be more effectively and efficiently discharged in the public interest, and acting within the police powers vested in it by the Constitution of this State (Okla. Const. (1907), Art. IV, Section 1, Art. VII (1967) Section 1, 4; In re Integration of State Bar of Oklahoma, 185 Okla. 505, 95 P.2d 113 (1939); In re Bledsoe, 186 Okla. 264, 97 P.2d 556 (1939); Ford v. Board of Tax Roll Corrections of Oklahoma County, 431 P.2d 423 (Okla. 1967)). The Supreme Court of Oklahoma does hereby create and continue an association of the members of the Bar of the State of Oklahoma to be known as the Oklahoma Bar Association, and promulgates the following rules for the government of the Association and the individual members thereof.

#### Historical Data

Amended by order of the Supreme Court, July 13, 1992.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name Level



Title 5. Attorneys and the State Bar
Chapter 1 - Attorneys and Counselors
Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Association
Article Article III
Section Art III Sec 1 - House of Delegates

Cite as: O.S. §, \_\_\_\_

The policy-making powers of the Association are vested in a House of Delegates, subject to its authority to delegate, during its adjournment, specific powers to the Board of Governors. Such policy-making power, shall, however, be subordinate to these rules and any orders that may be issued by this Court.

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

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None Found.

Citationizer: Table of Authority

Cite Name Level

⊜Oklahoma Statutes Citationized	
■Title 5. Attorneys and the State Bar	
Chapter 1 - Attorneys and Counselors	
Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Associa	tion
∰Article Article VI	
Section Art VI Sec 4 - Executive Director, Duties	

Cite as: O.S. §, \_\_\_\_

The Executive Director shall perform such duties and services as may be required by these Rules or the Bylaws and as may be directed by the Board of Governors or the President of the Association. He shall also keep a complete and accurate list of the members of the Association; notify delinquent members and certify the names of delinquent members to the Supreme Court as required by these Rules; certify to the Supreme Court records and other matters as provided by these rules.

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name Level

Oklahom	a Statutes Citationized
⊜Title 5. A	ttorneys and the State Bar
Chapter 1	- Attorneys and Counselors
Appendi	x 1 - Rules Creating and Controlling the Oklahoma Bar Association
Article	Article VI
Section	Art VI Sec 5 - Report of Executive Director
Cite as: O.S. §,	_

The Executive Director shall cause to be prepared for each month a statement showing the financial condition of the Association and such other financial reports requested by the Board of Governors. Such monthly financial statement shall be provided to the Oklahoma Supreme Court liaison and the Board of Governors within sixty (60) days from the end of each calendar month. Additionally, the Executive Director shall cause a copy of the Financial Audit of the Association to be provided to the Oklahoma Supreme Court liaison and the Board of Governors for review prior to being placed upon the agenda for approval by the Board of Governors.

#### Historical Data

Amended by order of the Supreme Court, 2018 OK 15, eff. February 26, 2018. (superseded document available).

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

Cite Name Level

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Citationizer: Table of Authority

Cite Name Level

Oklahoma Supreme Court Cases

Cite Name Level

<u>2018 OK 15</u>, <u>IN RE RULES CREATING AND CONTROLLING THE OKLAHOMA BAR</u> Cited

ASSOC.

Title 5. Attorneys and the State Bar

Cite Name Level

5 O.S. Art VI Sec 5. Report of Executive Director Cited

⊜Oklahoma Statutes Citationized	
Chapter 1 - Attorneys and Counselors	
Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Ass	ociation
Article Article VII	
Section Art VII Sec 1 - Budget Committee	

Cite as: O.S. §, \_\_\_\_

There shall be a Budget Committee, composed of the President-Elect, who shall be Chairman, the Executive Director of the Association, as a member ex officio, at least five (5) members, chosen from the House of Delegates and at least three (3) members chosen from the Board of Governors. The President-Elect, subject to the approval of the Board of Governors, shall select the appointive members for the Committee not later than August 1 in each year. The Budget Committee shall prepare a proposed annual budget of the financial needs of the Association for the following year. On or before October 20th the proposed budget shall be published in one issue of the Bar Journal, together with a notice that a public hearing thereon will be held by the Budget Committee at the Oklahoma Bar Center on a date and at a time fixed in the notice, but not later than November 15. The budget shall be approved by the Board of Governors prior to being submitted to the Supreme Court.

Members of the Association may appear to protest any items included or excluded from the proposed budget. On or before December 10, the finalized budget shall be submitted by the Budget Committee, with its recommendation, to the Supreme Court. The Committee in making its report shall take into consideration any action taken by the House of Delegates which affects the Association's financial requirements. The Supreme Court shall review said proposed budget to determine if the proposed items of expenditure are within the Court's police powers and necessary in the administration of justice, and will act on said budget prior to December 25 of each year.

No funds of the Association shall be used or expended for any items not included in the annual budget as approved by the Supreme Court, or as subsequently amended by order of the Supreme Court.

#### Historical Data

Amended by order of the Supreme Court, 2011 OK 65, eff. June 27, 2011. (superseded document available).

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

Cite Name Level

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Citationizer: Table of Authority

Cite Name Level

Oklahoma Supreme Court Cases

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 Name
 Level

 2011 OK 65.
 IN RE RULES CREATING AND CONTROLLING THE OKLAHOMA BAR
 Cited

**ASSOCIATION** 

Case 5:19-cv-00281 HE Document 179-1 Filed 04/29/25 Page 16 of 60

Cite Name Level

5 O.S. Art VII Sec 1, Budget Committee Cited



Cite

5 O.S. Art VII Sec 2,

Name

Use and Disbursements of Funds

Title 5. Attorneys and the State Bar  Oklahoma Statutes Citationized  Title 5. Attorneys and the State Bar  Chapter 1 - Attorneys and Counselors  Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Association  Article Article VII  Section Art VII Sec 2 - Use and Disbursements of Funds
Cite as: O.S. §,
No funds shall be withdrawn except in the manner approved by the Board of Governors. The funds of the Association shall be used and expended for any expense of the Association provided for by the budget.  (a) With the exception of the Client Security Fund on expenditures of the Association, checks for taxes, health insurance an checks not exceeding \$5,000, checks shall be signed by any two of the following staff members of the Association:  Executive Director  General Counsel  Director of Continuing Legal Education  Director of Public Information  On expenditures exceeding \$5,000 except for taxes, health insurance and utilities, checks shall be signed by the Executive Director, or a member of his staff designated by him, and countersigned by the President or Vice-President of the Association or by a member of the Board of Governors designated by the Board.  (b) On expenditures of the Client Security Fund, checks shall be signed by the Chairman of the Client Security Fund Committee and countersigned by the President of the Association.
Historical Data
Amended by order of the Supreme Court, SCBD No. 4483; October 2, 2008. ( <u>superseded document available</u> ).  Citationizer <sup>©</sup> Summary of Documents Citing This Document
Cite Name Level  None Found.  Citationizer: Table of Authority
Cite Name Level  Title 5. Attorneys and the State Bar

Level

Cited

Title 5. Attorneys and the State Bar
⊜Oklahoma Statutes Citationized
☐Title 5. Attorneys and the State Bar
Chapter 1 - Attorneys and Counselors
Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Association
Article Article XV
Section Art XV - Bylaws Adopted By Association
Cite as: O.S. §,
Bylaws Adopted By Association
Subject to these rules, the Association may adopt such Bylaws as it may deem necessary for its government and for the
implementation of these rules.
Citationizer <sup>©</sup> Summary of Documents Citing This Document
Cite Name Level
None Found.

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Cite

# DECLARATION EXHIBIT B

Filed 04/29/25 Page 20 of 60

#### Title 5. Attorneys and the State Bar Oklahoma Statutes Citationized Title 5. Attorneys and the State Bar Chapter 1 - Attorneys and Counselors Appendix 2 - Bylaws of the Oklahoma Bar Association Section Preamble - Preamble Cite as: O.S. §, \_\_\_\_\_

Bylaws of the Oklahoma Bar Association.

Chapter 1, App. 2

Preamble.

WHEREAS, the Supreme Court of the State of Oklahoma has heretofore promulgated rules creating and regulating the Oklahoma Bar Association:

Now, THEREFORE, we, the members of the Oklahoma Bar Association, do hereby adopt the following Bylaws:

#### Historical Data

Adopted and promulgated by the House of Delegates, December 3, 1971.

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

Cite Name Level

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Citationizer: Table of Authority

Cite Name Level

Cite as: O.S. §,
Bylaws of the Oklahoma Bar Association.
Chapter 1, App. 2
Article VII Bar Journal.
A Bar Journal shall be published as directed by the Board of Governors.
Historical Data
Citationizer <sup>©</sup> Summary of Documents Citing This Document
Cite Name Level
None Found.
Citationizer: Table of Authority

Cite Name Level

# DECLARATION EXHIBIT C

## SB 1615: The Oklahoma Response to the SemGroup Bankruptcy

By Mark E. Schell and Robert D. McCutcheon

The Oklahoma Legislature recently enacted SB 1615, the "Oil and Gas Owners' Lien Act of 2010," signed into law by Gov. Brad Henry on April 20, 2010. Codified at 52 O.S. §549.1, et seq., SB 1615 passed the Oklahoma Senate on a vote of 44-0 and the Oklahoma House of Representatives on a vote of 98-0, and it was effective on April 20, 2010. The authors of this article have firsthand knowledge of the drafting of SB 1615 and the legislative process by which SB 1615 was enacted. The purpose of this article is to summarize for the Oklahoma bench and bar the circumstances out of which SB 1615 arose, the problems SB 1615 is intended to resolve and the mechanisms SB 1615 employs to resolve those problems.

#### THE SEMGROUP BANKRUPTCY

A number of related companies under the SemGroup umbrella filed for Chapter 11 bankruptcy protection in Delaware on July 22, 2008. Those consolidated proceedings will be referred to collectively as "the SemGroup Bankruptcy," and the affiliated SemGroup entities joined in the SemGroup Bankruptcy will collectively be referred to as "SemGroup" for purposes of this article. Certain issues of Oklahoma law were interpreted in the SemGroup Bankruptcy in such a manner as to subordinate the interests of Oklahoma oil and gas producers and royalty owners to the interests of lending institutions with security interests in oil and gas purchased from the producers by SemGroup. SB1615 is the Oklahoma Legislature's response to this and other such unfavorable judicial interpretations of Oklahoma's producer lien and revenue laws.

In the months preceding its bankruptcy filing, SemGroup had been purchasing oil and gas from the producers under terms providing that production payments generally were due 20-50 days after the date of the delivery of that production. By way of example, oil typically was paid for on the 20th day of the month following actual delivery to SemGroup, so a well operator selling oil during June would be paid for that oil on July 20. Without notice of any financial difficulties SemGroup was encountering in June, that same producer would likely continue to sell oil to SemGroup in July until the producer failed to receive payment on July 20 for June production. By then, SemGroup would have acquired 50 days of oil production without paying for it, and this, in fact, is what occurred. As of July 22, 2008, the date the bankruptcy petition was filed, SemGroup owed the owners of oil and gas produced from Oklahoma wells in excess of \$127 million — most of it for sales in June and July.

## THE LEGAL OPTIONS THEN AVAILABLE TO OWNERS OF OKLAHOMA OIL AND GAS PROCEEDS

The economic stakes for the affected Oklahoma producers and royalty owners were tremendous given the \$127 million price tag of the production purchased but not paid for by SemGroup, but their rights to recover the amounts owed to them were severely restricted by federal bankruptcy laws and certain restrictive judicial interpretations of Oklahoma's producer lien laws in effect at the time.

The Oklahoma producers' lien law in effect at the time of the SemGroup Bankruptcy filing was the Oil and Gas Owner's Lien Act, 52 O.S. §548.1, et seg. (the Section 548 Act). The Section 548 Act granted an "interest owner" a "continuing security interest in and a lien upon the oil or gas severed, or the proceeds of sale if such oil or gas has been sold, to the extent of his interest until the purchase price has been paid to the interest owner." The Section 548 Act required filing a lien notice to perfect the lien. The 10th Circuit Court of Appeals, in Arkla Exploration Co. v. Norwest Bank of Minneapolis, 948 F.2d 656 (10th Cir. 1991) [Arkla], had construed the Section 548 Act in a manner that substantially undercut the producers' statutory lien rights: the *Arkla* case held that, as a matter of law, a lender with a prior perfected security interest under the Oklahoma Uniform Commercial Code had superior rights to those of an Oklahoma producer claiming a lien under the Section 548 Act. At the time of the SemGroup Bankruptcy there had been no decision of an Oklahoma court addressing the issue of these relative priorities.

The Oklahoma producers countered the *Arkla* case by asserting that the Oklahoma Production Revenue Standards Act, 52. O.S. §570.1, *et seq.*, in Section 570.10 (Section 570.10), created an implied trust in favor of the producers. As such, the proceeds of the production sold to SemGroup would be deemed to be held in trust for the benefit of the producers as the rightful owners of those proceeds. The producers' argument was that, since SemGroup was a mere trustee and not the owner of oil and gas revenues held in trust for the producers — the Bankruptcy Court had no legal authority to dispose of those revenues as assets of the estate, and SemGroup's secured lenders had

no basis upon which to assert the priority of their liens as to those revenues. At the time of the SemGroup Bankruptcy, Section 570.10 had not been construed by any court with respect to the implied trust issue.

### THE INITIAL SEMGROUP BANKRUPTCY PROCEEDINGS

Accordingly, from the perspective of Oklahoma producers, the lines were drawn very early in the SemGroup Bankruptcy. On one side was SemGroup, along with a consortium of its non-Oklahoma secured lenders (secured lenders), asserting that the secured lenders had prior perfected security interests in the oil and gas production purchased by SemGroup from the producers — as well as the proceeds of that production, and that their rights were superior to the rights of the Oklahoma producers and royalty owners to the oil and gas or its proceeds. On the other side were several active producers who asserted that Section 570.10 imposed an implied trust on the proceeds of production such that production proceeds were not part of the debtor's estate and, therefore, could neither be disposed of by the Bankruptcy Court nor subject to any purported security interest granted to the secured lenders. Initially, some of the more active Oklahoma producers filed their own adversary proceedings in the SemGroup Bankruptcy, seeking an adjudication of their rights and a turnover of the proceeds of the oil and gas they sold to Sem-Group. The parties eventually agreed to a court-sanctioned procedure by which producers could file an omnibus adversary complaint in the bankruptcy that would be binding on all Oklahoma claimants and interest owners asserting rights to any proceeds in the case, and such an adversary complaint was filed on behalf of the Oklahoma producers and interest owners (the Oklahoma Proceeding).

It was during this stage of the proceedings in the SemGroup Bankruptcy that the Oklahoma producers began to take additional actions to obtain clarification and protection of their rights to oil and gas production and revenues. The producers took a two-fold approach: first, they sought an official opinion construing Section 570.10, and second, they began drafting legislation that would clarify and protect their rights to payment for the proceeds of their production. The former of these efforts resulted in a Nov. 5, 2008, attorney general's opinion construing Section 570.10, and the latter resulted in the passage of SB 1615.

#### THE ATTORNEY GENERAL'S OPINION

Given the Section 570.10 issues raised in the SemGroup Bankruptcy and the absence of judicial authority construing that provision, the producers sought an official interpretation of Section 570.10. On Sept. 10, 2008, Sen. Brian Bingman formally requested an official opinion of the attorney general of the state of Oklahoma as to the following:

- Whether Section 570.10 creates an implied trust under which a person holding production revenue or proceeds must do so for the benefit of the legal owner of the revenue or proceeds; and
- Whether the person receiving production revenue or proceeds has any right, title or interest in the revenue or proceeds.

In response to Sen. Bingman's request, the Oklahoma attorney general issued his official opinion on Nov. 5, 2008. According to the attorney general:

The Legislature intended an implied trust (whether resulting or constructive) under the provisions of Section 570.10(A) of Title 52. [citations omitted]. Furthermore, the holder of the revenue or proceeds of oil and gas production is an implied trustee who has no rights in or to such revenue or proceeds and who is under a statutory duty to pay the revenue or proceeds of oil and gas production to the implied beneficiaries; *i.e.*, the owners legally entitled thereto. The holder of the revenue or proceeds of oil and gas production acquires no right, title or interest in such revenue or proceeds.<sup>2</sup>

If the attorney general's opinion had been applied in the SemGroup bankruptcy case, the proceeds of oil and gas production sold to SemGroup would have been held by SemGroup as an implied trustee for the benefit of the Oklahoma producers and royalty owners on whose behalf that production was sold — SemGroup would have had no rights in those proceeds and could not have granted a security interest in them to the secured lenders. However, Section 570.10 covered only "proceeds" of production and not rights in unsold product in SemGroup's inventory on the date of bankruptcy which would have been covered only under the Section 548 Act.

#### THE INITIAL LEGISLATIVE EFFORTS

The initial legislation supported by the producers group was introduced as HB 2055 during the 2009 legislative session. HB 2055 was actively sponsored by the Oklahoma Independent Petroleum Association (OIPA) and also had support of royalty owners. The fundamental approach of HB 2055 was to add a new section to Article 9 of the Oklahoma Uniform Commercial Code that would grant the owners of interests in oil and gas a first priority purchase money security interest in oil and gas when severed and in the proceeds of that oil and gas when sold. The key elements of HB 2055 were: (a) the purchase money security interest was automatically perfected without the necessity of filing a UCC-1 or other instrument (as would have been required under the Section 548 Act or traditional UCC principles); and (b) the security interest would survive until the interest owner was paid in full. HB 2055 found its genesis in similar legislation enacted by Texas (Texas Producers' Act). The Texas Producers' Act had been asserted on behalf of Texas producers in the SemGroup bankruptcy and was the subject of an omnibus adversary proceeding (Texas Proceeding) similar to the Oklahoma Proceeding.

HB 2055 passed both houses of the state Legislature unanimously, but because of legislative rules, HB 2055 was referred to a conference committee. There the bill sat when substantial opposition arose from a group of both first purchasers and also downstream purchasers of oil and gas from first purchasers. The concern initially expressed was only that HB 2055 provided for the security interest to continue in the production sold even as to oil and gas sold to a buyer in the ordinary course of business. That issue was resolved by compromise, and the proponents of HB 2055 were willing to insert language protecting the buyer in the ordinary course of business identical to the Texas Producers' Act. However, in the final hours of the legislative session, certain first purchasers and downstream purchasers had an amendment inserted that would have abolished Section 570.10 on a prospective basis. Those groups had been advised of the potential impact of the attorney general's opinion and wanted Section 570.10 repealed. The last minute insertion of the repeal of Section 570.10 effectively poisoned the bill — the 11th-hour repeal of Section 570.10, even on a prospective basis, was deemed by the proponents of HB 2055 as adverse to the

rights of the claimants in the SemGroup Bankruptcy – and it would have fractured the bipartisan support HB 2055 enjoyed. The speaker of the house would not allow the bill to be brought out of conference committee without a resolution of the matter. No accommodation on the issue of repeal of Section 570.10 was possible, and thus HB 2055 was not reported out of the conference committee.

#### THE SUBSEQUENT SEMGROUP **BANKRUPTCY PROCEEDINGS**

While HB 2055 was winding its way through the 2009 legislative session, cross-motions for summary judgment were filed both in the Oklahoma Proceeding and the Texas Proceeding by all interested parties. These motions put into issue the questions of the rights of the secured lenders vis-à-vis the Oklahoma producers and royalty owners under Oklahoma law and the Texas producers and royalty owners under the Texas Producers' Act. Soon after the adjournment of the 2009 legislative session, the bankruptcy judge ruled on the motions. The secured lenders won. The Oklahoma and Texas producers and royalty owners lost.

As to the Oklahoma Proceeding, the bankruptcy judge ruled that Section 570.10 did not create an implied trust as the attorney general had opined. In so ruling, the bankruptcy judge acknowledged that Section 570.10 had not been subject to judicial review and that the matter was one of first impression. The bankruptcy judge also acknowledged the persuasive effect of an attorney general's opinion under Oklahoma law. However, the bankruptcy judge disagreed with the attorney general and refused to follow his opinion. The bankruptcy judge also ruled that the Arkla decision was binding on the determination of priorities under the Section 548 Act. With respect to the Texas Proceeding, the judge held that Texas' producer-friendly modifications to the Texas Uniform Commercial Code, which created a lien priority in favor of Texas producers as against those claiming through the debtors of production, were inapplicable to the case. Instead, the judge ruled that the laws of the states in which the first purchasers were incorporated, Delaware and Oklahoma, applied. The judge went on to hold that Texas producers, to the extent they had perfected security interests only under Texas law, held unperfected interests subordinate to those of SemGroup's lenders in that case.3



Although the ruling in the Texas Proceeding did not directly affect existing Oklahoma law, given that HB 2055 was patterned on the Texas concept of incorporating oil and gas lien rights under the umbrella of the Uniform Commercial Code, the ruling was a clear signal that a different legislative approach was needed in order to adequately protect Oklahoma's producers and royalty owners. One of the holdings in the Texas Proceeding was that, under certain circumstances and subject to certain exceptions, the law of the state of the debtor's incorporation – not the law of the state in which the security interests arose or where the product or proceeds of those interests were located — determines the priority of competing security interests. The Texas Producers' Act on which HB 2055 was patterned required no separate recording to perfect the purchase money security interest in oil and gas sold or the proceeds thereof, and the same concept was incorporated in HB 2055. The bankruptcy court's ruling in the Texas Proceeding placed substantial doubts on the efficacy of approaching the statutory remedy from a Uniform Commercial Code standpoint. Consequently, SB 1615 was drafted based on completely different legal underpinnings in an attempt to ensure that Oklahoma law would govern the interpretation of SB 1615 and would control its application in all respects.

#### **ENACTMENT OF SB 1615**

Immediately following the Bankruptcy Court's rulings in both the Oklahoma and

Texas Proceedings, the OIPA appointed a committee to consider the best approach to a legislative response to the rulings and to protecting the rights of Oklahoma producers and royalty owners to payment for their production. At the same time, dialogues were opened with previous opponents of HB 2055. Following those discussions, the OIPA committee drafted legislation that, in substantial form, was enacted as SB 1615. SB 1615 had the support of the OIPA, the royalty owners, and some of the businesses that had originally opposed HB 2055. SB 1615 initially drew opposition from some members of the banking community as well as some of the first purchasers and downstream purchasers who were instrumental in the defeat of HB 2055. However, all of the objections of the various interests groups were resolved through compromise, and SB 1615 passed without objection by any of the interested groups. As referenced earlier, the final vote on SB 1615 reflected unanimous approval from both houses — in the Senate, the vote was 44-0, and in the House, the vote was 98-0.

#### THE PROVISIONS OF SB 1615

Synopsis of Oklahoma Oil and Gas Law Relating to SB 1615

SB 1615 was written to protect the right to be paid for oil and gas produced and sold regardless of the nature of the interest involved. To place SB 1615 in its proper context, it is useful to briefly review the nature of mineral ownership under Oklahoma law, principles governing mineral extraction and sale, and the legal relationships between the various parties with competing interests in minerals situated in Oklahoma.

The mineral interest represents the total of all interests possible in the oil, gas and other minerals. The owner of such an interest may convey undivided interests in the full mineral interest. The owner likewise may create various present and future interests in the minerals. With reference to benefits to be derived from exploitation of the minerals, the mineral owner has multiple incidents of ownership including (a) the right to enter upon the land and to extract oil and gas; (b) the power to confer such right upon another by executing an oil and gas lease; (c) the right to receive all payments under such a lease, including the bonus, delay rentals and royalties; and (d) retention of a reversionary interest upon the expiration of an oil and gas lease.4 To this list of the incidents

of mineral ownership, SB 1615 adds one more item: the right to be secured in the payment for oil and gas when sold. The right to be so secured follows the oil and gas upon extraction and inures to the benefit of each and every owner of an interest in the minerals and the severed oil and gas regardless of the nature of that interest.

Because the risk and expense of drilling and completing an oil and gas well is considerable, the mineral owner seldom undertakes such operations. Rather, the mineral owner customarily executes an oil and gas lease that grants to another (known as the lessee) the rights of exploration, drilling and production (i.e., the first incident of mineral ownership), while retaining the remaining incidents and benefits of ownership, including the right to receive royalties.<sup>5</sup> In addition to executing an oil and gas lease, there is another mechanism by which the right to explore for oil and gas can be transferred from the mineral owner, and that is through a forced pooling order issued by the Oklahoma Corporation Commission. Under a forced pooling order, an unleased mineral owner (or a lessee under an oil and gas lease) is afforded the opportunity to participate in development of oil and gas minerals — in the absence of an election to participate, those rights are transferred by operation of the pooling order to the operator of the unit.6 Thus, the principal operative instruments for the transfer of a mineral interest owner's first incident of ownership, the exploitation of oil and gas minerals, are the oil and gas lease and the pooling order. Under either an oil and gas lease or a pooling order, the transferee of a non-participating mineral interest owner's right to explore and produce has what is referred to as a "working interest" and the original mineral interest owner retains what is referred to as the "royalty interest."

While the execution of an oil and gas lease does not vest title to the oil and gas minerals in the oil and gas lessee, the lessee does acquire a vested interest in the land. The oil and gas lessee's interest in the land is known as a profit a prendre, an incorporeal hereditament. This interest of the oil and gas lessee constitutes an interest or an "estate" in land for purposes of conveyancing, but it is not "real estate" as that term is used in certain statutes.<sup>7</sup>

Although not "real estate" in the pure sense of that term, various "real estate" concepts apply to an oil and gas lease: oil and gas leases

Arrangements for the sale of the extracted oil and gas product must then be made so that all of the ownership interests can realize the full benefit of the bargains made under the lease or pooling order.

are subject to the statute of frauds; the assignment of an oil and gas lease must comply with formalities of instruments affecting real estate; leases must be acknowledged and recorded in order to impart constructive knowledge; a lessee may maintain an action in equity to quiet title; general rules of implied warranties in the sale of personalty do not apply to an oil and gas lease; the oil and gas lease is real property for the purposes of a vendor's lien; the sale of a lease is not subject to the Uniform Commercial Code; the oil and gas lease is classified a "property or rights to property" for purposes of the federal tax lien and is subject to such lien; a lessee is considered an "owner" and therefore has standing before the Oklahoma Water Resources Board to seek a groundwater use permit; transfers of leases are treated in the same manner as transfers of real property and are subject to the recording statutes; and, an oil and gas lessee is entitled to intervene as a matter of right in condemnation proceedings.8

Oil and gas are extracted from the reservoirs in which they are trapped and brought to the surface by the working interest owners under either the oil and gas lease or a pooling order. However, extraction of oil and gas is just the first part of the exploitation process. Arrangements for the sale of the extracted oil and gas product must then be made so that all of the ownership interests can realize the full benefit of the bargains made under the lease or pooling order. At this point of the exploitation process, another set of contracts comes into play. Typically, sales arrangements are made by the operator of an oil or gas well under either a joint operating agreement or through individual marketing agreements. In addition to any applicable provision under an oil and gas lease, the joint operating or marketing agreements typically set the terms by which the operator or working interest owner is given the authority to sell the oil and gas product on behalf of those with an interest in the product, including the royalty share. Occasionally, a working interest owner that is not an operator elects to separately market that owner's share of the oil or gas as well as the royalty share attributable to that owner's working interest share.

In all events, the working interest owner or operator sells the oil or gas on behalf of itself, any other working interest owners that have contracted with them to sell their share of production, and the other ownership interests involved, including the royalty owners. Oil typically is sold at the well site. Gas is sold either at the wellhead or off premises. While the point of sale and the market dynamics are different for each type of sale, the oil or gas product eventually is sold to what is defined under SB 1615 as a first purchaser under a variety of contractual arrangements that are separate from the joint operating agreement or other marketing arrangements with the seller of the product. The first purchaser then resells the oil or gas product in a variety of commercial transactions, both physical and financial.

#### **OVERALL PURPOSE**

SB 1615 is intended to provide each of the various ownership groups described above, and others who derive rights through them, a first priority lien to secure payment for their interest in oil and gas sold to a first purchaser. As enacted, SB 1615 replaces the Section 548 Act, and it is much broader in scope and effect than its predecessor. As explained in detail in the first part of this article, SB 1615 is designed to remedy some of the deficiencies perceived to be present in the Section 548 Act as well as to address some of the issues that emerged in the SemGroup Bankruptcy.9

#### NATURE, EXTENT AND DURATION OF LIEN

The first priority lien afforded by SB 1615 attaches to oil and gas in place, including at the earliest stage of the exploitation process, and the lien follows that oil and gas upon severance through all of the various types of commercial transactions relating to its extraction and sale. The lien extends to the "oil and gas rights" of an "interest owner." Oil and gas rights are broadly defined in Section 549.2(9) as any legal or equitable right, title or interest in and to 1) oil, 2) gas, 3) proceeds of oil and gas, 4) an oil and gas lease, 5) a pooling order and 6) an agreement to sell.

An interest owner is defined in Section 549.2(6) as a person owning an interest of any kind or nature in oil and gas rights before purchase of oil and gas production by a first purchaser, defined in Section 549.2(4) as the first person that purchases oil or gas from an interest owner, either directly or through a representative, under an agreement to sell. An interest owner includes a representative and a transferee interest owner. A representative is defined in Section 549.2(16) as any person who is explicitly or implicitly authorized to sell oil or gas or to receive the proceeds of oil and gas production on behalf or for the benefit of an interest owner under an agreement to sell. Section 549.2(21) defines a transferee interest owner as a person that acquires oil and gas rights from an interest owner that transfers or conveys oil and gas rights, in whole or in part. An agreement to sell is defined in Section 549.2(2) as any enforceable agreement, whether express or implied, whether oral or written, by which an interest owner, either directly or through a representative, agrees to sell or is deemed by applicable contract or law to have agreed to sell oil or gas upon or after severance to a first purchaser.

The lien is a statutory lien, granted and existing as part of and incident to the bundle of rights conferred by ownership of oil and gas and all rights deriving from that ownership. The lien exists in and attaches to all oil and gas in the state of Oklahoma as of the effective date of SB 1615, it continues uninterrupted and without lapse on and after severance, and it further continues uninterrupted and without lapse in and to all proceeds of the sales of such oil and gas.<sup>10</sup> The lien exists until the interest owner (including a representative first entitled to receive the sales price) has received the sales price. 11 Sales price is defined in Section 549.2(17) as the proceeds a first purchaser agrees to pay an interest owner or representative under an agreement to sell.

Consequently, the lien attaches immediately to oil and gas rights, including oil and gas in place, and it follows the physical oil and gas product when severed, the severed oil and gas product when sold to a first purchaser and the proceeds of such a sale. There is no interruption of the lien throughout the entirety of these transactional processes. Even when the lien

drops off of the physical oil and gas product when sold by a first purchaser, the lien continues without interruption in all proceeds of such a sale.

The lien exists in the proceeds of the sale of oil or gas under an agreement to sell until the interest owner entitled to be paid the sales price actually receives the sales price.<sup>12</sup> Proceeds are broadly defined in Section 549.2(14) as any of the following when paid or to be paid in consideration of, or as a consequence of, the sale of oil or gas under an agreement to sell: oil or gas on or after severance; inventory of raw, refined or manufactured oil or gas after severance and rights to or products of any of the foregoing; cash proceeds, accounts, chattel paper, instruments, documents or payment intangibles with respect to any of the foregoing.

#### PERFECTION OF OIL AND GAS LIEN

The lien is granted and exists as part of and incident to the ownership of oil an gas rights, and it is perfected automatically without the need to file a financing statement or any other type of documentation. The lien exists and is perfected from the effective date of SB 1615.<sup>13</sup>

#### PRIORITY OF OIL AND GAS LIEN

Except for certain permitted liens, an oil and gas lien takes priority over any other lien, whether arising by contract, law, equity or otherwise, or any security interest [security interest being defined in Section 549.2(18) as a security interest governed by Article 9 of the Oklahoma Uniform Commercial Code]. There are two categories of permitted liens listed in Section 549.2(11): (a) a pre-existing mortgage lien or security interest granted by a first purchaser or (b) a lien created by statute, rule or regulation of a governmental agency for storage or transportation charges. The two categories of permitted liens are narrowly defined and apply only to the circumstances in those definitions.

Pre-existing mortgage liens or security interests are permitted liens for priority purposes only if all of the following conditions are met: (a) the holder of the lien/security interest is not an affiliate of the first purchaser; (b) the lien/security interest secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee prior to the effective date of SB 1615; and (c) the mortgage lien/security interest must be validly perfected with a first priority against the claims of all persons under applicable law

other than persons holding a statutory or regulatory lien as to which first priority is granted by statute or regulation. Even if a mortgage lien/security interest comes within the definition of a permitted lien, the priority of such a mortgage lien/security interest is lost when the written instrument of indebtedness is modified, amended or restated in either of two ways: 1) to increase the principal amount of the indebtedness outstanding on the effective date of SB 1615 or 2) to extend the stated maturity in effect on the effective date of SB 1615.

For the statutory or regulatory lien to be a permitted lien with priority over an oil and gas lien, such a lien must be validly perfected and enforceable and may not be in favor of an affiliate of a first purchaser. The priority accorded a statutory or regulatory lien is only as to storage or transportation charges, including terminal charges, tariffs, demurrage, insurance, labor or other charges, owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell. The priority of such a statutory or regulatory lien is limited to the listed charges for 90 days from the time the first purchaser delivers oil or gas for storage or transportation.

#### **RIGHTS OF PURCHASERS**

Section 549.6 provides that an oil and gas lien has priority over the rights of any purchaser except as specifically set forth in that section. Section 549.6 provides that a purchaser [defined in Section 549.2(15) as a person that is not an affiliate of a first purchaser and that takes, receives or purchases oil or gas from a first purchaser] takes free of an oil and gas lien, and is relieved of any obligations created by Section 570.10, only in either of the following events: (a) the purchaser is deemed to be a buyer in the ordinary course of business of the first purchaser's business as defined in Article 9 of the Oklahoma Uniform Commercial Code; or (b) the purchaser has paid all of the consideration due the first purchaser, including by exchange of oil or gas, net-out or set-off, under all applicable enforceable contracts in existence at the time of the payment. However, even if such a purchaser takes free of the oil and gas lien, the lien continues uninterrupted in the proceeds paid to or otherwise due the first purchaser.

#### COMMINGLING

Section 549.5 governs the relative priorities where oil or gas sold by different interest owners is commingled to ensure that there can be no argument that the lien is lost by the fact of commingling and to prescribe the rules for accommodating potentially competing priorities in the commingled product. Section 549.5 provides that its purpose is to recognize the continuation of oil and gas lien rights in the commingled product stream only as to a volume of product proportionate to the volume of product that originated from an interest owner. The basic concept under Section 549.5 is that the lien continues without interruption and attaches to and is automatically perfected as to any commingled product. The lien attaches only to the volumes out of the commingled product equal to the volumes of product to which the lien originally attached. The lien has priority over any security interest or other lien that is not a lien under SB 1615 or a permitted lien, whether or not the security interest or other lien has been properly perfected. If more than one lien under SB 1615 attaches to the commingled product — then the liens rank equally in the proportion that the respective sales prices secured by each lien bears as a percentage of the total of the sales prices secured by all liens applicable to the production at the time the production was commingled.

### CERTAIN MATTERS NOT AFFECTED OR IMPAIRED BY SB 1615

Section 549.8 lists several matters that are not affected by SB 1615. They are: (a) the time at which legal title to oil and gas may pass by agreement or operation of law subject to an oil and gas lien; (b) the right of a first purchaser to take or receive oil and gas under the terms of a division order (provided the division order doesn't modify, waive or abrogate in any respect the rights of an interest owner under SB 1615); and (c) the right of a first purchaser to take or receive oil and gas under an agreement to sell, subject to the anti-waiver provisions in Section 549.9.

Section 549.11 provides that the rights of an operator of an oil and gas well to be paid, setoff or withhold funds from another interest owner as security for or in satisfaction of any debt or security interest are not impaired by SB 1615. Section 549.11 also provides that in the event of a dispute between an operator and another interest owner, a good faith tender of funds operates as a tender of the funds to both in any of the following circumstances: (a) it is made to the person designated in writing as the appropriate recipient by the operator and other interest owner; (b) it is made to a person

who otherwise shows himself or herself to be the one entitled to the funds; or (c) it is made to a court of competent jurisdiction in the event of litigation or bankruptcy.

### RESTRICTIONS ON WAIVER OF RIGHTS UNDER SB 1615

Given the potential for substantial inequality in bargaining power between an interest owner and a first purchaser, Section 549.9 provides that the rights granted by SB 1615 cannot be waived except under very circumscribed conditions. No interest owner shall be required, as a condition or term of an agreement to sell or otherwise, to waive, relinquish or release any oil and gas lien or any rights under SB 1615 other than upon payment in full of the sales price. Likewise, no interest owner can be required to agree to any provision that would apply the law of any state other than the state of Oklahoma insofar as the same relates to rights under SB 1615. Such attempted waivers or agreements are declared to be void as a matter of the public policy of Oklahoma. However, Section 549.9 does permit the waiver of rights under SB 1615 only when: (a) the first purchaser posts a letter of credit in form and amount satisfactory to the interest owner or the interest owner's representative; or (b) the first purchaser agrees to a binding contractual arrangement satisfactory in form and substance to the interest owner or the interest owner's representative to prepay or escrow the sales price under an agreement to sell and the first purchaser then performs all of its obligations under the agreement to sell.

### ENFORCEMENT OF THE OIL AND GAS LIEN

Section 549.10 provides for the enforcement of the oil and gas lien, including matters relating to limitations, venue and consolidation of actions. The lien expires on a rolling monthly basis one year after the last day of the month following the date proceeds from the sale of oil or gas subject to such lien are required by law or contract to be paid to the affected interest owner. In the event of an intervention of a bankruptcy or other insolvency or reorganization proceeding, the limitations period is tolled for an additional 90 days from the earlier of: (a) the final conclusion or dismissal of such proceedings or (b) the date final relief is obtained from the applicable tribunal authorizing the commencement of an enforcement action. In addition to any other court of competent jurisdiction, an

action to enforce the lien may be commenced in the district court of the county in which the oil and gas well is located, or the oil or gas is produced, or wherever the unpaid-for oil or gas or the proceeds of that oil and gas may be found. Proceedings involving multiple wells in one county can be joined in the same action. Where separate actions are commenced, the district court may consolidate them. The court shall allow to the prevailing party in any enforcement action all costs of the action, including a reasonable attorney's fee. Nothing in SB 1615 impairs or affects the right of any interest owner to maintain a personal action to recover the debt against any person liable for payment of the sales price or to exercise any other rights and remedies available at law or in equity.

#### RIGHTS CUMULATIVE

Section 549.12 provides that the rights under SB 1615 are intended to be cumulative with all other rights an interest owner may otherwise have at law or in equity. Section 549.12 also provides a statutory construction mechanism to resolve potential conflicts between SB 1615 and any other rights so that the interest owner's rights are liberally construed and the statutory construction that affords the most comprehensive protection to the interest owner to secure the receipt of the sales price shall be given preference. Section 549.12 also provides that any rights of an interest owner accrued under the provisions of the Section 548 Act are preserved to the extent not in conflict with SB 1615.

#### CONCLUSION

SB 1615 is Oklahoma's legislative response to the potential issues inherent in any insolvency or reorganization proceeding involving an operator, a representative or a first purchaser, including the issues that surfaced in the SemGroup Bankruptcy. SB 1615 had broad support both of royalty owner groups and oil and gas producers. By unanimous vote of both houses of the Legislature, the state of Oklahoma, through SB 1615, has determined that the owners of interests in oil and gas, including the producers that take the extraordinary exploratory risks required to extract oil and gas from below the surface, bring that oil and gas to the surface, and then sell that oil and gas into commerce, and those royalty interest owners claiming through them — are the first to be paid for their ownership rights and efforts. No person who derives financial benefit from the extraction and sale of oil and gas

from Oklahoma wells, including the first purchasers or any financial institutions claiming under them, will be permitted to capitalize their companies or collateralize their loans at the expense of those who provide that capital and/or collateral. SB 1615 unequivocally provides Oklahoma producers and royalty owners superior lien priority status with respect to oil and gas production or revenues derived through their efforts or based on their interests in Oklahoma oil and gas, and it expands and strengthens the arsenal of weapons available to them to protect and preserve those rights in the event they someday find themselves once again in the position of being a creditor in the bankruptcy or insolvency proceedings of an entity that has purchased and not paid for their oil and gas production.

- 1. 52 O.S. §548.2.
- 2. 2008 OK AG 31
- 3. The opinion in the Oklahoma Proceeding may be found at *In re SemCrude, L.P.*), 407 B.R. 140, 2009 WL 1740750 (Bankr. D. Del. June 19, 2009). The opinion in the Texas Proceeding may be found at *In re SemCrude*, 407 B.R. 112, 2009 WL 1740748 (Bankr. D. Del. June 19, 2009). Also, in *McKnight v. Linn Operating Inc.*, CIV-10-30-R (W. D. Okla.), the plaintiffs argued, among other theories, that Section 570.10 created a fiduciary duty under the implied trust articulated in the attorney



#### **BROKERAGE FRAUD**

Brokerage fraud and mismanagement of investors' funds occur far more often than people realize. Discovery of brokerage firm misconduct is rarely revealed during good economic times. However, market declines cause investors (or their tax and legal professionals) to identify the real reason for the sosses or missing funds. My law practice is devoted to helping those people, including senior citizens, who may have been victimized by the financial industry.

For a free consultation and case review, please call (405) 748-8855 or visit my website at www.StockAndBrokerFraud.com or email me at Law@KurtisWard.com



general's opinion. Judge David L. Russell granted the defendant's motion to dismiss the Section 570.10 fiduciary claim relying on the Bankruptcy Court's decision in the Oklahoma Proceeding to find that Section 570.10 created no implied trust and therefore imposed no fiduciary duties.

- 4. Kuntz, The Law of Oil and Gas §15.2 [herein Kuntz].
- 5. Kuntz §15.1.
- 6. 52 O.S. §87.1(d).
- 7. Kuntz §23.23.
- 8. *Id*.
- 9. In this article, citations to SB 1615 shall be to a specific section of SB 1615,  $\it e.g.$ , to "Section 549.1."
  - 10. Section 549.3.
  - 11. Section 549.3.C.
  - 12. Id.
  - 13. Section 549.4.
  - 14. Section 549.7.

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1880 The Oklahoma Bar Journal Vol. 81 — No. 23 — 9/4/2010

# DECLARATION EXHIBIT D



Adjourn

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#### ATTENDANCE DETAILS

#### Location

Supreme Court of Oklahoma 2100 to Lincoln Blvd Auditorium Oklahoma City, DK 73105

Deta ond Line

# DECLARATION EXHIBIT E

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Title 5. Attorneys and the State Bar

Chapter 1 - Attorneys and Counselors

Appendix 1-B - Rules for Mandatory Continuing Legal Education

Section Rule 1 - Mandatory Continuing Legal Education Commission

Cite as: O.S. §, \_\_\_\_

Rules for Mandatory Continuing Legal Education

Chapter 1, App. 1-B

Rule 1. Mandatory Continuing Legal Education Commission.

- (a) There is hereby established a Mandatory Continuing Legal Education Commission (MCLEC) consisting of eleven (11) members who are members of the Bar of this State of which one voting member may be a non-resident of the State of Oklahoma. The Executive Director of the Oklahoma Bar Association and the Director of Continuing Legal Education of the Oklahoma Bar Association shall be ex-officio members without vote. The remaining nine (9) members shall be appointed by the President of the Oklahoma Bar Association with the consent of the Board of Governors of the Oklahoma Bar Association.
- (b) The MCLEC shall have the following duties:
  - (1) To exercise general supervisory authority over the administration of these rules.
  - (2) To adopt regulations consistent with these rules with approval of the Board of Governors.
  - (3) Report annually on the activities and operations of the Mandatory Continuing Legal Education Commission to the Board of Governors of the Oklahoma Bar Association and the Oklahoma Supreme Court.
- (c) Five (5) Commissioners shall constitute a quorum of the MCLEC.
- (d) A member of the MCLEC who misses three (3) consecutive regular meetings of the MCLEC, for whatever reason, shall automatically vacate the office.

#### Historical Data

Adopted by orders January 17, 1986; eff. March 1, 1986; amended by order of Oct. 29, 1987. Amended by order of the Supreme Court, 2018 OK 79, eff. January 1, 2019.

#### Citationizer<sup>©</sup> Summary of Documents Citing This Document

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None Found.

Citationizer: Table of Authority

Cite Name Level

# Title 5. Attorneys and the State Bar

# <u>─</u>Oklahoma Statutes Citationized

Title 5. Attorneys and the State Bar

Chapter 1 - Attorneys and Counselors

Appendix 1-B - Rules for Mandatory Continuing Legal Education

Section Rule 7 - Regulations

Cite	as:	O.S.	δ.	

Rules for Mandatory Continuing Legal Education Chapter 1, App. 1-B Rule 7.Regulations.

The following Regulations for Mandatory Continuing Legal Education are hereby adopted and shall remain in effect until revised or amended by the Mandatory Continuing Legal Education Commission with approval of the Board of Governors and the Oklahoma Supreme Court.

# Regulation 1.

- 1.1. The Mandatory Continuing Legal Education Commission shall consist of eleven (11) members as provided by Supreme Court rule. The Executive Director of the Oklahoma Bar Association and the Director of Continuing Legal Education of the Oklahoma Bar Association shall be ex-officio members without vote. Nine (9) members of the Commission shall be appointed by the President of the Oklahoma Bar Association with the consent of the Board of Governors. Initially three (3) appointed members shall serve one-year terms, three (3) appointed members shall serve two-year terms, and three (3) appointed members shall serve three-year terms. Thereafter, at the expiration of the stated terms, all members shall serve three-year terms. Members shall not serve more than two successive three-year terms.
- 1.2. The President of the Oklahoma Bar Association shall appoint the Chairman of the Commission on Mandatory Continuing Legal Education. The Commission on Mandatory Continuing Legal Education shall elect a Vice Chairman and Secretary from among its members.
- 1.3. The Commission may organize itself into committees of not fewer than four (4) voting members for the purpose of considering and deciding matters submitted to them, except five (5) affirmative votes shall be necessary for any action under Rule 6 of the Rules of the Supreme Court of the State of Oklahoma for Mandatory Continuing Legal Education.
- 1.4. Members of the Commission shall be reimbursed for their actual direct expenses incurred in travel when authorized by the Board of Governors or the President.
- 1.5. Support staff as may be required shall be employed by the Executive Director of the Oklahoma Bar Association in the same manner and according to the same procedure as other employees of the Oklahoma Bar Association within the funds available in the budget approved by the Supreme Court.
- 1.6. As used herein "MCLEC" and the "Commission" shall mean the Mandatory Continuing Legal Education Commission. "CLE" shall mean Continuing Legal Education. "MCLE" shall mean Mandatory Continuing Legal Education. "Rules" referred to shall mean and are the Rules of the Supreme Court of the State of Oklahoma for Mandatory Continuing Legal Education.

# Regulation 2.

2.1. Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to the rules or regulations governing MCLE.

2.2. An attorney who is exempt the MCLP requirement 7 and r Rutiel 2 Shall and a second annual report required by Rule 5 of said rules.

# Regulation 3.

- 3.1. Attorneys who have a permanent physical disability which makes attendance of CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interest and physical ability. The Commission shall review and approve or disapprove such plans on an individual basis and without delay. Rejection of any requested substitute for attendance will be reviewed by the Board of Governors of the Oklahoma Bar Association prior to any sanction being imposed.
- 3.2. Other requests for substituted compliance, partial waivers, or other exemptions for hardship or extenuating circumstances may be granted by the Commission upon written application of the attorney and may likewise be reviewed by the Board of Governors of the Oklahoma Bar Association. Other substitute forms of compliance may be granted for members with permanent or temporary physical disabilities (based upon a written confirmation from his or her treating physician) which makes attendance at regular approved CLE programs difficult or impossible.
- 3.3. Credit may be earned through teaching in an approved continuing legal education program, or for a presentation substantially complying with the standards of Regulation 4 in a program which is presented to paralegals, legal assistants, and/or law clerks. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of six (6) hours of credit for each hour of presentation.
- 3.4. Credit may also be earned through teaching a course in an ABA accredited law school or a course in a paralegal or legal assistant program accredited by the ABA. The Commission will award six (6) hours of CLE credit for each semester hour of academic credit awarded by the academic institution for the course.
- 3.5. Credit may also be earned through auditing of or regular enrollment in a college of law course at an ABA or AALS approved law school. The MCLE credit allowed shall equal a sum equal to three (3) times the number of credit hours granted by the college of law for the completion of the course.
- 3.6 Instructional Hour. Each attorney must complete 12 instructional hours of CLE per year, with no credit for meal breaks or business meetings. An instructional hour must contain at least 50 minutes of instruction.

Legal Ethics and Professionalism CLE. Effective January 1, 2021, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on Legal Ethics and Professionalism, legal malpractice prevention and/or mental health and substance use disorders.

# PROGRAM GUIDELINES FOR LEGAL ETHICS AND PROFESSIONALISM CLE.

Legal Ethics and Professionalism CLE programs will address the Oklahoma Rules of Professional Conduct and tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, fairness, competence, ethical conduct, public service, and respect for the Rule of Law, the courts, clients, other lawyers, witnesses and unrepresented parties. Legal Ethics and Professionalism CLE may also address legal malpractice prevention and mental health and substance use disorders.

Legal Malpractice Prevention programs provide training and education designed to prevent attorney malpractice. These programs focus on developing systems, processes and habits that reduce or eliminate attorney errors. The programs may cover issues like ensuring timely filings within statutory limits, meeting court deadlines, properly protecting digital client information, appropriate client communications, avoiding and resolving conflicts of interest, proper handling of client trust accounts and proper ways to terminate or withdraw from client representation.

Mental Health and Substance Use Disorders programs will address issues such as attorney wellness and the prevention, detection and/or treatment of mental health disorders and/or substance use disorders which can affect a lawyer's ability to provide competent and ethical legal services.

Programs addressing the ethical tenets of other disciplines and not specifically pertaining to legal ethics are not eligible for Legal Ethics and Professionalism CLE credit but may meet the requirements for general CLE credit.

3 of 8

3.7. Hours of Grant in excess of the Anthony and all requirement may be carried to the succeeding calendar year. Such hours must, however, be reported in the annual report of compliance for the year in which they were completed and in the year for which they are being claimed and must be designated as hours being carried forward.

# Regulation 4.

- 4.1.1. The following standards will govern the approval of continuing legal education programs by the Commission.
- 4.1.2. The program must have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as an attorney.
- 4.1.3 The program must deal primarily with matters related to the practice of law, professional responsibility, legal ethics, professionalism, mental health or substance use disorders related to attorneys. Programs that address law practice management and technology, as well as programs that cross academic lines, may be considered for approval.
- 4.1.4. The program must be offered by a sponsor having substantial, recent, experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the program.
- 4.1.5. The program itself must be conducted by an individual or group qualified by practical or academic experience. The program, including the named advertised participants, must be conducted substantially as planned, subject to emergency withdrawals and alterations.
- 4.1.6. Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the MCLE Administrator. A mere outline without citations or explanatory notations will not be sufficient.
- 4.1.7. The program must be conducted in a comfortable physical setting, conducive to learning and equipped with suitable writing surfaces.
- 4.1.8. Approval may be given for programs where audiovisual recorded or reproduced material is used. Video programs shall qualify for CLE credit in the same manner as a live CLE program provided:
- (a) the original CLE program was approved for CLE credit as provided in these regulations or the video program has been approved by the Commission under these rules, and
- (b) each person attending the video program is provided written material as required in regulation 4.1.6 and
- (c) each program is conducted in a location as required in regulation 4.1.7 and
- (d) there are a minimum of five (5) persons enrolled and in attendance at the presentation of the video program unless viewed at the Oklahoma Bar Center or sponsored by a county bar association in Oklahoma.
- 4.1.9. Approval for credit may also be granted for the following types of electronic-based CLE programs:

a. Live interactive websast seminars, webcast replay seminars, live teleborfore heast replays, on-line, on-demand programs and downloadable podcasts. If approved, an attorney may earn credit for seminars provided by these various delivery methods without an annual limit.

Such programs must also meet the criteria established in the Rules of the Oklahoma Supreme Court for Mandatory Continuing Legal Education, Rule7, Regulation 4, subject to standard course approval procedures and appropriate verification from the course sponsor.

- 1. The target audience must be attorneys.
- 2. The course shall provide high quality written instructional materials. These materials may be available to be downloaded or otherwise furnished so that the attorney will have the ability to refer to such materials during and subsequent to the seminars.
- 3. The provider must have procedures in place to independently verify an attorney's completion of a program. Verification procedures may vary by format and by provider. An attorney affidavit attesting to the completion of a program is not by itself sufficient.
- 4. If an online, on demand seminar is approved, it is approved only for twelve (12) months after the approval is granted. The sponsor may submit an application to have the course considered for approval in subsequent years.
- 4.2. Continuing legal education programs sponsored by the following organizations are presumptively approved for credit, provided that the standards set out in the Regulations 4.1.2 through 4.1.7 are met:

American Association for Justice

- \* American Bankruptcy Institute
- \* American Bar Association and Bar Sections
- \* American College of Real Estate
- \* American Corporate Counsel Association
- \* American Inns of Court

American Law Institute--American Bar Association Committee on Continuing Professional Education

\* American Lawyer Media, Inc.

Building Blocks, CLE

Center for American & International Law (formerly Southwestern Legal Foundation)

- \* Cleveland County Bar Association
- \* Commercial Law League of America

Defense Research Institute

- \* Energy Bar Association
- \* Executive Enterprises, Inc.
- \* Federal Bar Association
- \* Federal Deposit Insurance Corporation
- \* Federal Public Defender
- \* Garfield County Bar Association
- \* Garvin County Bar Association

**Great American Insurance Company** 

- \* International Municipal Lawyers Association (formerly NIMLO)
- \* Kingfisher County Bar Association
- \* Law Seminars International, Inc.
- \* Legal Aid Services of Oklahoma, Inc.
- \* Mayes County Bar Association
- \* Mealey Publications
- \* Mediation Institute
- \* Muskogee County Bar Association
- \* National Association of Attorneys General
- \* National Association of College and University Attorneys
- \* National Association of Criminal Defense Lawyers

\* National Association of Raily and Phally and Comment 179-1 Filed 04/29/25 Page 41 of 60

\* NBI, Inc.

**National Constitution Center Conferences** 

National District Attorneys Association

\* National Employment Law Institute

National Institute of Trial Advocacy

\* National Legal Aid and Defender Association

New York University School of Continuing and Professional Studies

Northwestern University School of Law

- \* Office of the Oklahoma Attorney General
- \* Oklahoma Association of Defense Counsel
- \* Oklahoma Association of Municipal Attorneys
- \* Oklahoma Baptist University Bench and Bar Association

Oklahoma Bar Association

- \* Oklahoma City Commercial Lawyers Association
- \* Oklahoma City Mineral Lawyers Society
- \* Oklahoma City Real Property Lawyers Association

Oklahoma City University Law School

Oklahoma County Bar Association

Oklahoma County Criminal Defense Lawyers Association

Oklahoma County Public Defenders Office

\* Oklahoma Criminal Defense Lawyer's Association

Oklahoma District Attorneys Council

Oklahoma Health Lawyers Association

\* Oklahoma Municipal Judges Association

Oklahoma Planned Giving Council

Oklahoma State University Farm Tax Institute

Oklahoma Trial Lawyers Association

\* Patent Resources Group, Inc.

Practicing Law Institute

\* Professional Education Systems, Inc.

Rocky Mountain Mineral Law Foundation

- \* SEC Institute, Inc.
- \* South Oklahoma City Lawyers Association

South Texas College Of Law Continuing Legal Education

\* State Bar of Texas

Strafford Publications

- \* Tax Forum
- \* Thomson West

TRI. Inc.

Tulsa County Bar Association

- \* Tulsa Estate Planning Forum
- \* Tulsa Pension Attorneys
- \* Tulsa Tax Club
- \* Tulsa Title and Probate Lawyers Association
- \* U.S. Air Force Judge Advocate General School
- \* U.S. Army Judge Advocate General School
- \* U.S. Department of Justice Office of Legal Education

University of Houston Law Foundation

University of Oklahoma College of Law

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\* Washington County Bar Association

WealthCounsel, LLC

\* WestLegalEducationCenter

Woodward County Bar Association

Yale Law School

Young Lawyers Division of the Oklahoma Bar Association

All other county bar associations in Oklahoma presenting seminars or programs that are co-sponsored by an organization that has presumptive approval as a CLE sponsor.

- \* Added since the rules were approved by the Supreme Court January 17,1986.
- 4.3. Approved seminars may be advertised in informational brochures and program materials provided by the sponsoring body. Organizations listed in Regulation 4.2 whose programs are presumptively approved shall give adequate notice that a program or seminar it conducts is not approved for MCLE credit in the event the program or seminar does not meet the standards set forth in Regulations 4.1.1 through 4.1.7.
- 4.4. The Commission may at any time re-evaluate and grant or revoke presumptive approval of a sponsor.
- 4.5. Any organization not included in Regulation 4.2 above, desiring approval of a course or program shall apply to the Commission by submitting an application on a form to be obtained from the Commission and supporting documentation at least forty-five (45) days prior to the date for which the course or program is scheduled. The Commission will advise the applicant in writing by mail within ten (10) days of the receipt of the completed application whether the program is approved or disapproved. Applicants denied approval of a program may appeal such a decision by submitting a letter of appeal to the Commission within fifteen (15) days of the receipt of the notice of disapproval.
- 4.6. An attorney desiring approval of a course or program which has not otherwise been approved shall apply to the Commission by submitting an application on a form to be obtained from the Commission and supporting documentation as follows:
  - (a) If approval is requested before the course or program is presented the application and supporting documentation shall be submitted at least forty-five (45) days prior to the date for which the course or program is scheduled.
  - (b) If approval is requested after the applicant has attended a course or program the application and supporting documentation shall be submitted within ninety (90) days after the date the course or program was presented or prior to the end of the calendar year in which the course or program was presented, whichever is earlier.

The Commission will advise the applicant in writing by mail within ten (10) days of the receipt of the completed application whether the program is approved or disapproved. Applicants denied approval of a program may appeal such a decision by submitting a letter of appeal to the Commission within fifteen (15) days of the receipt of the notice of disapproval.

4.7. The sponsor of an approved continuing legal education program may announce or indicate as follows:

This course has bee	n approved by the Oklahoma Bar	Association Mandatory Continuing Legal Education	'n
Commission for	hours of CLE credit, including _	hours of legal ethics credit.	

4.8. As soon as practicable, but in any event on or before the earlier of (1) thirty (30) days following an approved legal education program or (2) January 10 of the succeeding year, the sponsor shall furnish to the Commission such attendance information in such format as the Commission shall direct.

On or before February: 15th Of EAR year, Every additionable of the Okideship and Sociation and Submitton report in a form as the Commission shall provide concerning such attorney's completion of, exemption from or approved substitute for the minimum hours of instruction, including reference to hours earned during the preceding year and hours to be carried forward to the next year.

# Regulation 6.

Sponsors of the seminars or courses qualifying for Mandatory Continuing Legal Education credits shall keep records of attendance for a period of two (2) years following the date of the course or seminar. Publisher's note: The desk of the Supreme Court has informed us that Regulations 3.3, 4.2 were amended in 1991.

# Historical Data

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Adopted by order of Jan. 17, 1986, eff. March 1, 1986; Amended by Orders of October 29, 1987; Amended by Orders of October 28, 1988; Regulations 3.3, 4.2 amended 1991; Regulation 7 deleted 1994; Amended by order of the Supreme Court, S.C.B.D. No. 3319, June 13, 2002; Amended by Orders of March 13, 2002. Amended by order of the Supreme Court, 2014 OK 26, eff. January 1, 2015. Amended by order of the Supreme Court, 2018 OK 79, eff. January 1, 2019. Amended by order of the Supreme Court, 2020 OK 1, eff. January 1, 2021.

# Citationizer<sup>©</sup> Summary of Documents Citing This Document

Cite Name Level

None Found.

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Cite Name	Level			
Oklahoma Supreme Court Cases				
Cite	Name	Level		
<u>2014 OK 26,</u>	IN RE RULES FOR MANDATORY CONTINUING LEGAL EDUCATION	Cited		
<u>2018 OK 79</u> ,	IN RE RULES OF THE SUPREME COURT FOR MANDATORY CONTINUI	<u>VG</u> Cited		
<u>LEGAL EDUC.</u>				
<u>2020 OK 1</u> ,	IN RE RULES OF SUPREME COURT FOR MANDATORY CONTINUING	Cited		
	<u>LEGAL EDUCATION</u>			

# DECLARATION EXHIBIT F

# Title 5. Attorneys and the State Bar

# Oklahoma Statutes Citationized

Title 5. Attorneys and the State Bar

Chapter 1 - Attorneys and Counselors

Appendix 3-A - Oklahoma Rules of Professional Conduct

Section Preamble - A Lawyer's Responsibilities

Cite as: O.S. §, \_\_\_\_

Oklahoma Rules of Professional Conduct

Chapter 1, App. 3-A

Preamble: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should 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 a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time or resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's plotestic harresphrisibilities are prescribed in the Rives of Processional Coaleud, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulations is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

# Historical Data

Amended by order of the Supreme Court, 2007 OK 22; effective January 1, 2008 (superseded document available).

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# Title 5. Attorneys and the State Bar

# Title 5. Attorneys and the State Bar Chapter 1 - Attorneys and Counselors Appendix 3-A - Oklahoma Rules of Professional Conduct Article Client-Lawyer Relationship Section Rule 1.1 - Competence

Cite as: O.S. §, \_\_\_\_\_

Oklahoma Rules of Professional Conduct Chapter 1, App. 3-A Client-Lawyer Relationship

# Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

# **Comments**

# Legal Knowledge and Skill.

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill- considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

# **Thoroughness and Preparation.**

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions of the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence.

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject, including the benefits and risks associated with relevant technology.

# Historical Data

Amended by order of the Supreme Court, <u>2007 OK 22</u>; effective January 1, 2008. (<u>superseded document available</u>) Amended by order of the Supreme Court, <u>2016 OK 91</u>; effective September 19, 2016. (<u>superseded document available</u>)

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Cite Name Level

None Found.

# Citationizer: Table of Authority

Cite Name	Level				
Oklahoma Supreme Court Cases					
Cite	Name	Level			
2007 OK 22, 171 P.3d 780,	IN RE: APPLICATION OF THE OBA TO AMEND THE RULES OF	Cited			
	PROFESSIONAL CONDUCT				
<u>2016 OK 91</u> ,	IN RE OKLAHOMA RULES OF PROFESSIONAL CONDUCT	Cited			
Title 5. Attorneys and the State Bar					
Cite	Name	Level			
<u>5 O.S. Rule 1.1</u> ,	Competence	Cited			
<u>5 O.S. Rule 1.1</u> ,	Competence	Cited			

# Title 5. Attorneys and the State Bar

# Oklahoma Statutes Citationized

Title 5. Attorneys and the State Bar

Chapter 1 - Attorneys and Counselors

Appendix 3-A - Oklahoma Rules of Professional Conduct

Article Maintaining the Integrity of the Profession

Section Rule 8.4 - Misconduct

Cite as: O.S. §, \_\_\_\_\_

Oklahoma Rules of Professional Conduct Chapter 1, App. 3-A

Maintaining the Integrity of the Profession

# **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

# Comment

- [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.
- [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.
- [3] Deleted.

[4] A lawyer may refuse to comply with an ebligation imposed by an uponigood faith valie that all valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

# Historical Data

Amended by order of the Supreme Court, 2007 OK 22; effective January 1, 2008. (superseded document available)

# Citationizer<sup>©</sup> Summary of Documents Citing This Document

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# Oklahoma Bar Journal



# Representing Transgender and Gender-Diverse Clients

By Shannon D. Taylor

Last summer, I had the privilege of attending the National LGBT<sup>1</sup> Bar Association Annual Conference and Family Law Institute in Philadelphia. Two primary areas of focus for the conference were gender equality and inclusion. Upon registering, I was given my name badge and a choice of stickers from which to select to designate my pronouns, the options being she/her/hers, he/him/his, and they/them/their.<sup>2</sup> Despite my representation of many LGBT clients in the past, the conference was my first introduction to the importance of this question.

My time at the LGBT bar conference was filled with thought-provoking, insightful dialog with other attorneys, judges, and law students from across the country. I met brilliant, energetic lawyers, judges, law professors, law-students and advocates there for the purpose of exchanging ideas and experiences concerning representing LGBT clients. I heard stories, sometimes heart-wrenching, about transgender persons dealing with harassment and discrimination at work, in schools, in athletic organizations and in courtrooms.



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I listened to stories of personal, professional, and legal battles of LGBT attorneys from around the nation, battles for equality, inclusion and respectful recognition. I learned about laws in other states insofar as adoption, name changes, athletics, education, civil rights and more, and gained an understanding of the impact of these issues in the legal community.

To effectively represent transgender, gender-diverse and LGBT clients, we have a duty to stay current on the law and legal issues, and we must also have a general idea of current social and cultural issues pertaining to these clients. We may have longstanding prejudices or unexamined preconceptions that could inadvertently undermine representation of persons in the LGBT community. We must become aware of our own internal biases and explore ways to overcome them. We must become more empathetic and understanding.

Effective representation of transgender, gender-diverse and LGBT clients may also require that we explore implicit biases lurking in our offices, such as, client intake forms with only male/female gender options or honorific choices limited to Mr./Mrs./Ms. We may need to examine ways to make our offices more welcoming to transgender, gender-diverse and LGBT clients. We may need to evaluate restroom policies and other office policies and procedures to eliminate implicit bias or prejudice.

It is my hope that this article will be informative and helpful as to LGBT terminology and issues our clients may be facing in this emerging and rapidly changing area of law.

### **BASIC TERMINOLOGY**

With the onset of the year 2020, most people are familiar with the acronym LGBT<sup>3</sup> and its recent expansion to LGBTQ,<sup>4</sup> but what about LGBTQQIAAP.<sup>5</sup> LGBTTTQQIAA<sup>6</sup> or LGBTQIA+?<sup>7</sup>

As the acronym LGBTQIA+ suggests, there are multiple words that each letter of such acronyms can represent. For example, the G in LGBTQIA+ can refer to gay, genderqueer, gender-nonconforming or gender variant, the last three all referring to people whose gender identity is either both male and female, neither male nor female or who in some ways identify with a sex different from that assigned to them at birth.<sup>8</sup>

Pronouns typically reflect a person's gender identity. A transgender person may prefer to be identified using third-person singular pronouns (e.g., she or he and her or him), third-person plural pronouns (e.g., they and them) or alternative pronouns (e.g., ze/hir, ze/zir, per/pers, ey/em, xe/xem). Description of the person of the person

"Sexual orientation" typically describes the direction of a person's romantic and physical attractions. 11

"Gender identity" is one's internal sense of being male, female, both or neither. 12

"Sex" typically refers to the genetic factors and physical anatomy of a person. 13

"Gender" typically refers to characteristics within a person that begin to develop in infancy and can include masculine feelings, feminine feelings or a mixture of both. Gender can also include characteristics that are uncommon for the culture in which the person lives. Although many cultures have historically viewed gender as binary, either male or female, today's increased visibility and open dialog are leading to increased recognition of gender as nonbinary.

"Transgender" typically refers to an individual whose gender identity or expression does not, in some way, conform stereotypical expectations based on their assigned gender.<sup>17</sup> "Transsexual" typically refers to an individual whose body and gender identity do not match and who transitions by undergoing medical treatment.<sup>18</sup> Although the two terms are commonly used interchangeably, transgender is becoming more widely used.<sup>19</sup> A search for transgender case law should include both terms.<sup>20</sup>

"Female to male" (FTM) are those who are assigned the female sex at birth but identify as male; post-transition, they may identify as FTM, transgender man, transgender or simply as a man.<sup>21</sup>

"Male to female" (MTF) are those who are assigned the male sex at birth but identify as female; post-transition, they may identify as MTF, transgender woman, transgender or simply as a woman.<sup>22</sup>

In addition to transgender, other terms used for persons whose assigned sex at birth does not conform to their identified gender include, but are not limited to: gender-nonconforming, gender nonbinary, gender fluid, gender queer and gender-diverse.<sup>23</sup>

"Cisgender" refers to people whose internal sense of gender conforms with the sex they are assigned at birth.<sup>24</sup> It is not indicative of gender expression, sexual orientation, hormonal composition, physical anatomy or how one is perceived in daily life.<sup>25</sup>

It is also important to know the difference between gender identity (one's internal sense of being male, female, both or neither), gender expression (the way in which a person expresses gender identity through mannerisms, behavior, dress or appearance) and sexual orientation (typically used to describe the direction of a person's romantic and physical attractions).<sup>26</sup> It is also important to note that transgender, gender-diverse and cisgender persons alike may be straight, gay, bisexual or pansexual. Sexual orientation refers to whom someone wants to sleep with, whereas gender identity refers to someone who wants to sleep as.<sup>27</sup>

"Gender transition" or just "transition" is the process by which a transgender person begins to live in accordance with their gender identity. <sup>28</sup> Gender transition may include medical treatments, such as hormone therapy and surgery, but is often limited to social transition. <sup>29</sup> In a 2018 federal case in the United States District Court of Idaho, the court reasoned, "[n]ot all transgender people choose to undergo surgery as a part of the transition process. This is due to numerous potential factors, including whether surgery is medically necessary, and personal and financial factors such as lack of insurance coverage." <sup>30</sup> In other words, for many transgender and gender-diverse people, comfort is found within embracing their gender identity, role and expression without the desire or need for surgery; for others, surgery is essential and medically necessary to alleviate their gender dysphoria. <sup>31</sup>

"Gender dysphoria" is defined as the clinically significant distress experienced when gender identity or expression is incongruent with societal/cultural expectations based on the sex a person is assigned at birth, not the gender incongruence itself. <sup>32</sup> "Gender Identity Disorder" (GID) is the underlying medical or psychological diagnosis used to identify persons who experience gender dysphoria. <sup>33</sup> Many, if not all, LGBTQIA+ persons have endured ridicule, rejection, hatred, bullying, abuse and more. Many, if not all, have experienced some form of distress relating to fear of being outed before they are ready or to people from whom they fear such as rejection, ridicule, mistreatment, loss of relationships, loss of employment, loss of religious or spiritual community and so on.

The World Professional Association for Transgender Health (WPATH), formerly known as the Harry Benjamin International Gender Dysphoria Association, has developed internationally accepted standards of care (SOC) which provide recommendations and guidance for diagnosis and best practices for care and treatment of gender dysphoria and GID.<sup>34</sup> The WPATH's SOC affirm that treatment is individualized.<sup>35</sup> In other words, the requirements for gender transition cannot be satisfied by a single treatment or medical protocol. I cannot overstate the importance of this, particularly with respect to gender marker cases in states and jurisdictions where the court and/or vital records offices require a physician's letter stating that the patient (client) has completed the full transition process. In many states, there is no statutory framework to change a gender marker. In my experience, some courts or vital records representatives interpret the phrase "gender transition" to mean complete medical/surgical body modification. However, not every person has full, or even partial, gender confirmation surgery. Some people choose not to have surgery and have hormone therapy only. Others may choose only to change their name and/or dress in a manner consistent with their identified gender. Thus, the transition process is very individualized.<sup>36</sup>

"Transitioning" is commonly used to describe the process of change from one's assigned sex to one congruent with one's gender identity.<sup>37</sup> There are various medical treatments available to help with transitioning, but not all transgender persons elect to have gender affirmation, or gender confirmation, surgery, or otherwise alter their physical bodies.

Once a person has completed their individualized transition process, whatever that process entails for the particular person, they may describe themselves as FTM or MTF or simply male or female.<sup>38</sup> Some transgender persons may have difficulty exhibiting enough outward features to look like, or pass as, their identified gender.<sup>39</sup> "Passing" refers to the ability to blend into society without being detected as a transgender person.<sup>40</sup> In some cases, transgender individuals choose to go "stealth," meaning they choose not to reveal that their sex assigned at birth is anything other than who they are now.<sup>41</sup> Conversely, some transgender and gender-diverse persons are extremely open about their transition, life history and experiences.

# **HISTORICAL NOTES**

As far back as settlement of the Americas, many Native American tribes have recognized gender as a spiritual aspect of a person, describing five genders. A person with a male or female body could have a spirit that corresponded with their biological sex, or a spirit opposite their biological sex, or the fifth gender, two-spirit, a biological male or female with both a male and female spirit. Two-spirited people were recognized as spiritual leaders and held a special place in tribal society. With the coming of the Europeans in the 1500s and 1600s, two-spirits were called derogatory things, often suppressed or even killed. Recognition and acceptance of two-spirits is reemerging in today's society.

Upon the emergence of psychology during the late 19th and 20th centuries, transgender and gender diverse persons were viewed as having some form of pathology, and in 1952, with the first publication of the *DSM*,<sup>47</sup> began the pathologizing of people who varied from societal norms relating to male and female behavior. While there were some who resisted the idea of transgender as a disorder, later editions of the DSM coined the term gender identity disorder.<sup>48</sup>

In 1966, Harry Benjamin published his groundbreaking book, The Transsexual Phenomenon,<sup>49</sup> wherein he argued against pathologizing transgender persons and asserted that gender and gender identity should be viewed as a spectrum between male and female.<sup>50</sup> Benjamin was also one of the first professionals to address mental health issues common to transgender and gender-diverse persons, bringing to light the impact of societal and environmental pressures on transgender and gender-diverse persons, which, in turn, places them at increased risk for depression, anxiety, poor treatment by medical professionals, self-harm, homelessness and substance abuse.<sup>51</sup>

## **REPRESENTATION ISSUES**

Legal issues impacting and affecting transgender, gender-diverse and LGBTQIA+ persons can arise in a variety of areas within the justice system and legal proceedings.

The following list is compiled from Transgender Family Law, A Guide to Effective Advocacy,<sup>52</sup> and is intended to raise awareness of advocacy issues and areas of law that may be impacted by gender identity, sexual orientation and related issues. This list is not an all-inclusive list nor is it a detailed resource. For further information, please refer to *Transgender Family Law, A Guide to Effective Advocacy*:<sup>53</sup>

# Recognition of name and sex/gender

- · Change of legal name
- · Change of legal sex/gender

# Changing name and/or gender/sex designation on identity documentation

- · Birth records
- · Driver's license or state identification cards
- Passport
- · Social Security Database and Social Security Card

- · Pre-transition marriage and marriage equivalents
- · Post-transition marriage and marriage equivalents
- · Marriage based social security benefits
- · Marriage based immigration benefits
- · Issues regarding transgender people in non-marital relationships

# Divorce and relationship dissolution

- · Dissolution of marriage
- · Impact of gender transition on marriage
- · Issues potentially impacted by gender transition
  - Annulment
  - Gender transition as grounds for divorce and impact on support and property division
  - · Dissolution of marriage equivalents
  - Dissolution of nonmarital relationships
- Issues surrounding a non-transgender spouse's use of the transgender spouse's gender identity or gender transition in divorce and dissolution cases
  - Defensive defending the transgender spouse's gender identity or failure to come to consciousness about transgender status prior to marriage from allegations of fault, maliciousness or deception
  - Offensive alerting the court to factors such as to how a transgender spouse may be impacted by transgender status, such as employment discrimination, future financial vulnerability, medical care expenses and societal discrimination

# Protecting parental rights

- · Legal parentage
- · Attempts to terminate legal parentage due to transgender status
- · Child biologically related to transgender parent
  - Medical consents and legal agreements
  - · Prebirth decrees, parentage judgments and adoption
- · Child adopted by transgender parent
  - Stepparent adoption
  - Agency adoption
- · Child born of a marriage and not biological related to transgender parent
- · Child born to unmarried parents and not biologically related to transgender parent
- Issues concerning discrimination against transgender parents in custody/visitation disputes or anti-LGBTQIA+ biases and restrictive parenting orders
- Issues concerning bias and restrictive parenting orders
- Protecting children from parental alienation and psychological abuse based on a
- parent's LGBTQIA+ status

# Custody disputes concerning transgender children

- Standards of parental fitness and best interests of the child
- · When parents agree on how to deal with a transgender child
  - Supportive and non-supportive parents
  - Obtaining professional guidance
- When parents do not agree on how to deal with a transgender child
- · Legal Standards regarding a transgender child's medical care
- · Determining and allocating parental authority over medical decision making for transgender children
- Qualifications of court-appointed experts such as a Guardian ad Litem or other court appointed evaluator insist on expertise dealing with transgender children
- Keep the focus on the child's best interests

Legal protections for transgender children and youth ("the small ts")<sup>54</sup>

- · Who is the client?
- · Social transition
  - Name change
    - When both parents consent
    - When only one parent consents
    - When neither parent consents
  - Sealing records and protecting the child client's privacy
- · Medical transition
  - · Extent of medical procedures
  - · Timing of medical procedures
  - · Payment for medical procedures

- Insurance coverage
- · Supportive counseling
- · Emancipation
- · Transgender youth in state custody
  - Foster care
  - · Juvenile justice system
- · Transgender youth in shelters
- · Education and transgender and gender nonconforming youth in schools
  - · Use of child's desired name and gender marker
  - · Change of name, pronouns and gender marker in student records
  - School forms
  - · Dress codes and uniforms
  - Bathrooms and locker rooms
  - Curricula and inclusive classroom practices
  - · Special education laws
  - Bullying
  - Discrimination and harassment prevention and other school policies
  - Nondiscrimination laws

### Intimate partner violence (IPV) involving a transgender spouse or partner

- Incidence of abuse research, tools and strategies concerning the prevalence of IPV in LGBTQIA+ communities<sup>55</sup>
- When the LGBTQIA+ person is abused examples of abuse
  - · Physical, economical, emotional or intellectual abuse
  - · Threats to "out" the LGBTQIA+ person to family, an employer or spiritual or religious community
  - Silencing capitalizing on fears to keep an LGBTQIA+ person "closeted"
     Interfering with gender transition (withholding, destroying or otherwise interfering with medication)
  - Refusal to use post-transition name and pronouns/honorifics
  - · Identity theft
  - Destroying or withholding gender specific clothing and accessories
  - · Obstructing access to support groups, medical care
  - Ridiculing the LGBTQIA+ person's body or challenging authenticity of gender identity
- When the abuser is LGBTQIA+
  - · Getting help for the abuser
  - · Addressing institutional biases against transgender, bisexual, gay and lesbian people
  - Focus on behavior, not gender identity or sexual orientation
- Impact of IPV on family law legal and emotional hurdles
  - Challenges for survivors
  - · Challenges for abusers
  - Protective orders
  - Criminal advocacy
  - Immigration remedies for survivors in IPV
    - Specific domestic violence remedies that can be used by immigrant IPC survivors<sup>56</sup>
- · Safety planning
  - Screening questions
  - Sex-segregated services/facilities
  - · Resources for abusers

# Estate planning and elder law

- · Surviving spouse or partner's ability to inherit
  - Importance of formalizing the relationship and testamentary wishes of a transgender person and their spouse whenever possible
  - Intestacy
    - Contingent upon recognition of marriage or nonmarital relationship
    - May depend on legal recognition of the transgender spouse or partner's post-transition sex/gender
  - Probate
    - Post-mortem "outing" to relatives or others who were otherwise unaware of the person's transgender identity
    - Legal standing or lack of standing of unmarried surviving partner
  - Non-testamentary dispositions to avoid potential challenges in probate or intestacy proceedings
    - Life insurance policies
    - Retirement accounts
    - Investment and bank accounts
    - Importance of insuring beneficiary designations are properly recorded, particularly where a beneficiary has changed their name
    - Income, gift or estate tax consequences

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- Medicaid or Supplemental Security Income considerations
- · Medical decision making
  - Particular vulnerabilities of transgender persons in medical emergencies
  - Guardianship can be a quasi-public process that can result in "outing" a transgender person against their wishes
  - Health care proxy or Power of Attorney for Health Care
  - · HIPAA compliant documents
  - Drafting end-of-life decision-making documents advance directives
- · Financial decision making
  - Durable power of attorney (POA)
    - The POA should clearly acknowledge the client's transgender status and all names the client, or principal, has ever been known by
    - If a named agent has changed their name, the document should include all names the agent has ever been known by
    - To remain effective after disability or incapacity of the client, or principal, the document must be titled "Durable Power of Attorney" and must set forth within the intent that the document shall not be affected (invalidated) by subsequent disability or incapacity of the principal, or lapse of time
    - Immediate effectiveness or contingent effectiveness
- Post-mortem matters, particularly concerning unmarried life partners
  - Post-mortem instructions should be stated clearly in a "directive as to remains" or similar document, as well as in the client's last will and testament and possibly a health care proxy or POA for Health Care
  - · Include instructions as to the client's preferred name and gender to be used

# Housing issues for transgender elders

- · Bias and discrimination in elder housing
- · Negative treatment stemming from pervasive bias, lack of knowledge, information and education
- The transgender elder's reluctance to speak out about discrimination or bias
- The transgender elder's wishes concerning self-identifying as transgender to staff and fellow residence in subsidized housing, assisted living or skilled care facilities

# Social security and veteran's benefits

In each of these areas, it may be necessary to address bias and educate opposing counsel, the judiciary, jury and court personnel.

### PRACTICE TIPS

As with any case, be aware of the client's goals and objectives. Use the client's post-transition name and pronouns in legal proceedings unless inconsistent with client's priorities. For example, some clients may not prefer to reference a change in gender or pronouns in public documents, for fear of repercussions. Ask courts to refer to litigants with their preferred pronoun and, if appropriate and consistent with the client's priorities, call ahead to inform the judge's staff of client's preferred pronouns or honorifics. Be aware of privacy concerns, potential media coverage, and/or social media attention.

Be aware of the client's financial situation. Retaining experts may be unaffordable but often the client's medical or mental health care providers can provide adequate testimony. Be aware that litigation is not always the answer. Be detail oriented and proactive about neutralizing and challenging discriminatory tactics. Be vigilant about protecting the client from irrelevant and discriminatory facts, arguments, and lines of questioning.<sup>57</sup> Consider asking the court to seal records of minors.

In addressing bias and educating opposing counsel, the judiciary, jury and court personnel, it may be necessary to use expert witnesses such as psychological or medical professionals, cite social science research in briefs or, in jury trials, educating the jury through voir dire. <sup>58</sup> Premise your arguments and representation with education. Reach out to local and national resources for information, support and guidance.

# WHAT ELSE CAN WE DO?59

- Watch films, interviews and performances by trans people. Listen to their stories, their own voices and experience. Many are available on YouTube.<sup>60</sup>
- · Explore resources listed with this article online.
- Attend community forums and conferences, visit with panelists and other attendees.
- Attend LGBTQIA+ or Trans Pride events, observe Pride Month (June), Transgender Day of Remembrance (November 20) and International Transgender Day of Visibility (March 31).
- Imagine realizing you identify as a gender different from the sex you were assigned at birth.
  - · How would you feel?
  - What concerns would you have?
  - Imagine sharing this with your friends, family, and your colleagues.
  - · Consider how these people would respond.
- · Imagine yourself moving through your day in a gender identity different that the sex you were assigned at birth.
  - · What would be different?
  - What might you encounter or feel?
     How might your perceptions of the world around you change?

- How might your perceptions of those around you change?
- · Explore implicit bias.
  - How would you feel if your parent came out as transgender and began to transition?
  - How would you feel if your parent came out as gay or lesbian?
  - If your child came out as transgender or gay or lesbian? What about your spouse?
  - · What about your child's teacher?
  - · What about your boss or a colleague or co-worker?
  - What questions, if any, might emerge for you?
- · Explore training programs, that include gender identity protections.

#### ADDITIONAL NOTES AND RESOURCES

Diana Courvant & Loree Cook-Daniels, Nat'l Coal. Against Domestic Violence Conference Handbook, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, and Responsibilities* (1st ed., 1998).

Stewart Landers and Paola Gilsanz, Mass. Dep't of Pub. Health, *The Health of Lesbian, Gay, Bisexual and Transgender (LGBT) Persons in Massachusetts* (July 2009) (last visited Feb. 26, 2020), www.mass.gov/eohhs/docs/dph/commissioner/lgbt-health-report.pdf.

# CASES THAT HAVE SHAPED TRANSGENDER RIGHTS

[Alfred F. Carlozzi and Kurt T. Choate at 88-89]

- Blatt v. Cabella's Retail. Inc., No. 5:14-cv-04822, 2017 WL 2178123 (E.D.Pa, May 18, 2017).
- Bradwell v. Illinois, 83 U.S. 130 (U.S. 1872).
- Brown v. Board of Education of Topeka (No. 1), 347 U.S. 483 (U.S. 1954).
- Christian v. Randall, 33 Colo.App. 129 (Colo. Ct. App. 1973).
- Cisek v. Cisek, No. 80 C.A. 113, 1982 WL 6161 (July 20, 1982).
- Daly v. Daly, 479 U.S. 876 (Oct. 6, 1986).
- Darin B. v. OPM, Appeal No. 0120161068, 2017 WL 1103712 (EEOC Mar. 6, 2017).
- Doe v. State, Dep't of Public Welfare, 257 N.W.2d 816, 821 (Minn. Aug. 19, 1977).
- Doe v. U.S. Postal Service, No. 84–3296, 1985 WL 9446 (D.D.C. June 12, 1985).
- Doe 1, et. al. v. Trump, No. 17-5267, 2017 WL 6553389 (D.C. Cir. 2017).
- Etsitty v. Utah Transit Authority, 502 F.3d 1215 (10<sup>th</sup> 2007).
- V. v. Barron, 286 F.Supp. 3d 1131 (D. Idaho 2018).
- Franciscan Alliance v. Azar et al., 7:16-cv-00108-O (N.D. Tex. Filed Aug. 23, 2016).
- Gloucester Cnty. Sch. Bd. v. GG, 853 F.3d 729 (4<sup>th</sup> 2017).
- Holloway v. Arthur Andersen & Co., 566 F.2d 659, 662 (9<sup>th</sup> 1977).
- In the Case of Claim for United Healthcare/AARP Medicare Complete, Docket No. M-15-1069, 2016 WL 1470038 (H.H.S. Jan. 21, 2016).
- In re Petition of Richardson to Change Name, 23 Pa. D. & C.3d (Pa. Ct. Comm. Pleas 1982).
- In re Winn-Ritzenbert, 26 Misc.3d 1 (N.Y. 1st Dep't. 2009).
- D. V. Lackner, 80 Cal.App. 3d 90, 95, 145 Cal.Rptr. 570 (Cal. Ct. App. 1978).
- v. Health Division, Dep't. of Health Serv. Of the State of Oregon, 277 Or. 371, 375 (Or. 1977).
- KL v. State, Dep't of Admin., Division of Motor Vehicles, N 3AN-11-05431 CI, 2012 WL 2685183 (Alaska 2012).
- Littleton v. Prange, 9 S.W.3d 223 (Tex. App. 1999).

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# **ABOUT THE AUTHOR**

Shannon Taylor is a solo practitioner in Oklahoma City focusing on guardianship, adoption, probate and LGBTQ+ advocacy. She graduated from the OCU School of Law in 2005 and is a member of the Oklahoma County Bar Association, National LGBT Bar Association and Association of Family and Conciliation Courts.

# **Endnotes**

- 1. Lesbian, Gay, Bisexual, Transgender.
- 2. Jennifer L. Levi and Elizabeth E. Monnin-Browder eds., *Transgender Family Law, A Guide to Effective Advocacy* (n ed. 2012). Other pronouns include: ze/hir or ze/zir, per/pers, ey/em, xe/xem, etc. See also www.mypronouns.org/.
- 3. Lesbian, gay, bisexual, transgender.
- 4. Lesbian, gay, bisexual, transgender, queer or questioning.
- 5. Lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, ally, pansexual.

- Lesbian, gay, bisexual, transgender, transsexual, two-spirit (Native American), queer, questioning, intersex, asexual, ally. See KW Counselling Services, OK2BME, www.ok2bme.ca/resources/kids-teens/what-does-lgbtq-mean/ (last visited Feb. 26, 2020).
- 7. Currently the most inclusive acronym, with each letter representing multiple terms, i.e. lesbian, gay/genderqueer/gender fluid, bisexual/bigender, trans/transgender, queer/questioning, intersex, asexual/aromantic/agender/abrosexual/bbroromantic/ally. The + is intended to encompass all others. See Urban Dictionary, www.urbandictionary.com. See also www.nytimes.com/2018/06/21/style/lgbtq-gender-language.html.
- 8. Id.
- 9. Jennifer L. Levi and Elizabeth E. Monnin-Browder eds., Transgender Family Law, A Guide to Effective Advocacy 5 (n ed. 2012).
- 10 Id.
- 11. Id. at 2.
- 12. Id.
- 13. Alfred F. Carlozzi and Kurt T. Choate eds., Transgender and Gender Diverse Persons, A Handbook for Service Providers, Educators, and Families 10 (Routledge 1st ed. 2019).
- 14. Id.
- 15. Id.
- 16. Id.
- 17. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 2.
- 18. Id. at 3.
- 19. Id.
- 20. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 3.
- 21. Id. at 4.
- 22. Id.
- 23. Alfred F. Carlozzi and Kurt T. Choate at 11.
- 24. Id. at 11 and 54.
- 25. See www.transstudent.org/definitions.
- 26. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 2.
- 27. Alfred F. Carlozzi and Kurt T. Choate at 12. See also, www.transstudent.org/definitions.
- 28. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 3.
- 29. World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 71, 97 (7th ed. 2012).
- 30. F.V. v. Barron, 286 F.Supp.3d 1131, 1137 (D. Idaho 2018).
- 31. World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 71, 97 (E. Coleman, W. Bockting, M. Botzer, P. Cohen-Kettenis, G. DeCuypere, J. Feldman, et al. eds. 7th ed. 2012).
- 32. Alfred F. Carlozzi and Kurt T. Choate at 3 and Jennifer L. Levi and Elizabeth E. Monnin-Browder at 11.
- 33 Id
- 34. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 5.
- 35. See WPATH Standards of Care.
- 36. Id.
- 37. Alfred F. Carlozzi and Kurt T. Choate at 13.
- 38. Id.
- 39. Id.
- 40. Id.
- 41. *Id*.
- 42. Id.
- 43. Alfred F. Carlozzi & Kurt T. Choate at 14-15.
- 44 Id
- 45. Id.
- 46. Id.
- 47. Diagnostic and Statistical Manual of Mental Disorders. Alfred F. Carlozzi and Kurt T. Choate at 15.
- 48. ld.
- 49. Harry Benjamin, *The transsexual phenomenon*, Transactions of the New York Academy of Sciences, 29(4), 428–430 (February 1967) (retrieved from doi.org/10.1111/j.2164-0947.1967.tb02273.x). Benjamin, H. (1966). *The transsexual phenomenon*. New York: The Julian Press.
- 50. Alfred F. Carlozzi and Kurt T. Choate at 15.
- 51. *Id*.
- 52. See generally Jennifer L. Levi and Elizabeth E. Monnin-Browder.
- 53. Id.
- 54. Alfred F. Carlozzi and Kurt T. Choate at 118, referencing the "small 'ts' in LGBT," and quoting M. Tiefer, M. Tollit, C. Pace and K. Pang (2017). Australian standards of care and treatment guidelines for trans and gender diverse children and adolescents. Melbourne: The Royal Children's Hospital, "Increasing evidence demonstrates that with supportive, gender affirming care during childhood and adolescence, harms can be ameliorated and mental health and wellbeing outcomes can be significantly improved."
- 55. See Additional Resources section online at www.okbar.org/barjournal/may2020/obj9105taylor.
- 56. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 195.

- 57. Jennifer L. Levi and Elizabeth E. Monnin-Browder at 119 (citing *In re Custody of T.J.*, No. C2-87-1786, 1988 WL 8302, at \*3 (Minn. Ct. App. Feb. 9, 1988), wherein the appellate court affirmed a protective order issued by the trial court precluding one parent from getting information about the other parent's transgender support group or deposing the group's members. The trial court and appellate court viewed this as harassing discovery. This case also affirmed a trial court order granting custody to the transgender parent, noting, among other things, that the transgender parent's status as transgender "does not automatically disqualify him from having a relationship with his child." *See also In re Welfare of V.H.*, 412 N.W.2d 389 (Minn. Ct. App. 1987) father's transvestism was no bar to his custody of daughter); *Summers-Horton v. Horton*, No. 88AP-622, 1989 WL 29421, at \*2 (Ohio Ct. App. 1989); and *Christian v. Randall*, 516.P2d. 132.
- 58. See generally Jennifer L. Levi and Elizabeth E. Monnin-Browder.
- 59. See generally Jennifer L. Levi and Elizabeth E. Monnin-Browder and Alfred F. Carlozzi & Kurt T. Choate.
- 60. YouTube videos: www.hrc.org/resources/coming-out-living-authentically-as-lgbtq-black-americans; youtu.be/QKL5hfovEi0 (Dwyane Wade talks about his child coming out as transgender); youtu.be/1MfxtM9N3fw (It Got Better featuring Laverne Cox).

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# EXHIBIT 2

	""Gase's.19-CV-00281-HE DOCUMENT	<u>, , , , , , , , , , , , , , , , , , , </u>	<u>J-2</u>	Filed 04/29/25 P	age 2 01-16-
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11	DEPOSITION OF MARK SCHELL	11	2	Vanguard - Firehawk Aerosp Article	pace Inc. 27
12	TAKEN ON BEHALF OF THE DEFENDANTS	12			20
13	ON NOVEMBER 26, 2024, BEGINNING AT 10:07 A.M.	13		U.S. SEC Form 8-K	29
14	IN OKLAHOMA CITY, OKLAHOMA	14		Case No. PB-21-97 Petition t Determine Death of Last Sur- Joint Tenant	to 39 viving
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18	APPEARANCES	18	-	Oklahoma Statute - Title 5, S Preamble - Lawyer's Respons	Section 92 sibilities
20	On behalf of the PLAINTIFF: Scott Day Freeman	19 20	8	Oklahoma Statute - Title 5, 9 1.1 - Competence	Section 96
21	GOLDWATER INSTITUTE 500 East Coronado Road	21	9	Coates vs. Fallin, 316 P.3d 924(2013)	116
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25	REPORTED BY: Jane McConnell, CSR RPR CMR CRR	25			
1	APPEARANCES (Continued)	1		STIPULATIONS	Page
	On behalf of the DEFENDANT MEMBERS OF THE BOARD OF GOVERNORS AND THE EXECUTIVE DIRECTOR OF THE OKLAHOMA	2		It is hereby stipulated and agr	reed by and
	BAR ASSOCIATION, IN THEIR OFFICIAL CAPACITIES:	3	bet	ween the parties hereto, through	their respective
	Heather L. Hintz	4	att	orneys, that the deposition of Mar	k Schell may be
5 .	PHILLIPS MURRAH 424 N.W. 10th, Suite 300	5	tak	en pursuant to notice and in accor	rdance with the
	Oklahoma City, Oklahoma 73103 (405) 235-4100	6	Fed	eral Rules of Civil Procedure on N	ovember 26.
7	hlhintz@phillipsmurrah.com	l		24 at the offices of 512 N. Broadw	•
8	- and -			, Oklahoma, before Jane McConn	
ਁ	Michael Burrage WHITTEN BURRAGE				CII, CON NI N NIIN
	512 N. Broadway		CR	\.	
	Oklahoma City, Oklahoma 73012 (405) 516-7800	10			
	mburrage@whittenburragelaw.com	11			
	On behalf of the DEFENDANTS CHIEF JUSTICE AND JUSTICES OF THE OKLAHOMA SUPREME COURT:	12			
	Kieran D. Maye, Jr.	13			
14	MAYE LAW FIRM 3501 French Park Drive	14			
15	Suite A Edmond, Oklahoma 73034	15			
16	(405) 990-2415 kdmaye@mayelawfirm.com	16			
17		17			
18	ALSO PRESENT: John Williams	18			
19		19			
20		20			
21		21			
22		22			
23		23			
24		24			
25		25			

	L A	No. I didn't keep a record of it.	1	Α	No.	
		Is the same thing true of your employment	2		Are you acquainted with any of the current	
	<ul><li>Q Is the same thing true of your employment</li><li>3 with Unit over all those years?</li></ul>			_	ers of the Oklahoma Bar Association's Board of	
	4 A Yes.			Governors?		
9	5 0	Sometimes Unit paid it?	5	Α	I don't know who's on the board, so I	
6	5 A	Yes.	6	don't k	now if I know any of them or not.	
-	7 0	Sometimes you paid it?	7	Q	Have you looked to see who's on the board	
8	3 A	That's correct.	8	at any	time since 2020?	
و	• 0	But you don't have a record of who did pay	9	A	Not that I recall.	
10	it?	,	10	Q	Did you look at who was on the board in	
11	L A	I do not.	11	2019?		
12	2 <b>Q</b>	Have you ever attempted to use the	12	Α	Not that I recall.	
13	Oklah	oma Bar Association's policy to request that	13	Q	Have you ever attended an Oklahoma Bar	
14	a port	tion of your dues be returned?	14	Assoc	iation budget hearing at any level of the	
15	5 A	No.	15	process?		
16	<b>Q</b>	Have you ever reviewed the Oklahoma Bar	16	Α	No.	
17	Assoc	iation's proposed budgets as they're published	17	Q	Either virtually or in person?	
18	in the	Oklahoma Bar Journal?	18	Α	That would be correct. The answer is no.	
19	) A	I may have, but I can't recall	19	Q	Have you ever reviewed the pleadings	
20	specifi	cally.	20	before	e the Oklahoma Supreme Court when it annually	
21	Q	Have you reviewed an Oklahoma Bar	21	reviev	vs the Oklahoma Bar Association annual budgets?	
22	Assoc	iation's proposed budget this year?	22	Α	No.	
23	3 A	No.	23	Q	Have you ever attended a hearing before	
24	ų Q	Did you do so in 2023?	24	the O	klahoma Supreme Court on an Oklahoma Bar	
25	5 A	I can't recall if I did or not.	25	Assoc	iation proposed budget?	
1	. 0	Page 42 Do you recall if you did in 2022?	1	Α	No. Page 44	
	_	Same answer. I can't recall. I doubt it,	2	_	Throughout your legal career, have you	
		an't recall.		Q bad a	ny other professional affiliations other than	
-	_	What about 2021?			a member of the Oklahoma Bar Association and	
5	_	Same answer.		_	ionally being a member of the Tulsa County Bar	
		You can't recall?			ciation and the American Bar Association?	
	•	No.	7	A	Did you say "legal affiliations"?	
	3 <b>Q</b>	Do you doubt it?	8	Q	Professional affiliations.	
	_	I doubt it, but I can't recall.	9	A	Just professional, period. Yes.	
10	_	Did you ever same questions. Did you	10	Q	Could you name them, please.	
11	_	eview the proposed budgets as they would	11	-	The Oklahoma Chamber of Commerce.	
12	appea	r on the website?	12	o	That would be the statewide chamber?	
13	3 A	No.	13	A	Yes. The OIPA, Oklahoma Independent	
14	ı Q	So when you say you didn't review the	14	Petrole	eum Association. Then they went through a	
15	15 proposed budgets or you don't recall doing it, that		15	reorga	nization and changed the name, and I don't	
16	16 would apply to any medium where the information was		16	recall	what it is. It's still the current name, I	
17	17 published?		17	believe	e, but my affiliation carried over into that	
18	3 A	That's correct.	18	revise	d organization.	
19	Q	Have you ever in your legal career reached	19		I was involved with an organization called	
20	out to	the executive director at the Oklahoma Bar	20	the Ok	klahoma Injury Benefit Coalition.	
21	21 Association to discuss any proposed OBA budget?		21	Q	Were you the chairman of that entity?	
22	2 A	No.	22	A	I think I was, if I recall.	
23	<b>Q</b>	Have you ever in your legal career reached	23	Q	What kind of an organization was the	
24	out to	anyone at the Oklahoma Bar Association at all	24	Oklah	oma Injury Benefit Coalition?	
25	to disc	cuss a proposed budget?	25		It was a coalition of companies that came	
_			_		: :	

Page 53 Q Do you remember what kind of issues you The Oklahoma judicial system does that? 2 raised on behalf of Unit at the legislature in your 2 No. I'm sorry. Maybe I misunderstood 3 career? 3 your question. A Certainly, work comp reform was a big one. Do you think the Oklahoma judicial system 5 Legislator -- I mean, judicial reform and tort 5 is not an independent branch of government in 6 reform, as well as drug testing. 6 Oklahoma? Q You said you were lobbying for judicial A No. It's set up to be an independent 8 reform. What kind of judicial reform were you 8 branch, certainly. Q Well, do you think -- my question was: lobbying for? 10 A To revise the way judges, Supreme Court 10 Do you think an independent judiciary is an 11 important part of Oklahoma's governmental structure? 11 judges, were appointed. Q Are you unhappy with the way Supreme Court A I think an independent judiciary is an 12 12 13 judges are presently appointed? 13 important part, but the question and the answer 14 A I am. 14 assume that it's independent. Q How would you like for them to be Q So my question was: Do you think 15 16 appointed? 16 Oklahoma's judicial -- judiciary is not an 17 A Like the US Senate does. 17 independent branch of government? 18 O So could you --18 A I do not think they're independent, no. 19 A I think they call it the Madison program. Q And what's the basis for your thinking 19 Q Well, could you explain, please, what that 20 that the Oklahoma judiciary is not an independent 2.0 21 means to you? 21 branch of government? A I think that the -- there should be 22 A Because they involve themselves in 23 recommendations made as to who can be -- who should 23 legislative policy matters. 24 be a judge. They should be vetted in public by the Q Which branch of the judiciary involves 25 Senate, and then the Governor can choose who he 25 itself in legislative policy matters, in your Page 54 Page 56 1 decides he wants to have it. 1 opinion? Q Is it your understanding the Governor Judges. 3 cannot presently decide who -- he cannot make a 3 Which branch of the judiciary? 4 choice presently? Well, we have district court judges and A He has three people given to him to choose 5 we have appellate court judges and Supreme Court 6 judges. Several of the Supreme Court judges have. 6 and that's it. Q Do you think an independent judiciary is Several of the Supreme Court judges have 8 an important part of Oklahoma's governmental Have gone to the legislature and advocated structure? 10 A Do I think it is? I think it would be. 10 against legislation that was pending in the 11 Q My question was: Do you think an 11 legislature. 12 independent judiciary is an important part of 12 And you think that activity that you 13 Oklahoma's governmental structure? 13 contend occurred makes the judiciary not 1.4 A Your question assumes that it's 14 independent? 15 independent. 15 A If they're supposed to be sitting judgment Q Is it your testimony that you think the 16 of any legislation in the past, but they went down 17 current judicial system in Oklahoma is not 17 and advocated against it, then I think they're not 18 independent? 18 independent. 19 A That's correct. 19 Which judges do you think went and 20 Q In what way do you think the Oklahoma 20 advocated at the Oklahoma legislature? 21 judicial system is not independent? 21 I know that Noma Gurich did.

22

22

25 an organization.

A Because they go down and advocate for

23 changes in what I believe to be policy issues, that

24 they should have no business getting involved in as

What's your knowledge of that?

Because one of the members of the

24 committee told me that she did.

What committee?

Page 1440(535 - 56)

Page 59 It would have been the judicial committee. 1 classes you've taken? 2 Q When did that happen, that you were told 2 A I do not. 3 that? 3 Q So starting at the top of the first page I can't recall for sure. It's been 4 of this Exhibit 6, it looks like last December you <sup>5</sup> several years. 5 took Social Security Retirement and Survivors Was it after 2019? 6 Benefits: Maximizing Outcomes for your Clients. A I can't recall. Uh-huh. Are you familiar with the continuing legal And Corporate Counsel Seminar. 9 education requirements of Oklahoma? 9 Uh-huh. 10 A I am. 10 Q Are those areas that are relevant to you 11 11 personally or for your legal work? Are you current on your continuing legal 12 education? 12 A The first one is not. I don't remember 13 A Yes, considering this year is not due yet. 13 what the Corporate Counsel Seminar was about. 14 Have you taken classes in 2024? Q Well, you've been a corporate counsel for A I have carryover hours and I'm signed up 15 30 plus years; right? 16 to take seven more. A That's correct. 16 17 Do you recall any continuing legal 17 So that's a Corporate Counsel Seminar? 18 education courses you've taken in the last five 18 But you don't know what was said in it. 19 years? 19 True. 20 A I should. I took some last year. I can't 20 So it could be stuff that I would think 21 recall what they were, but I know I took them. 21 was a rehash of everything I knew or it could be How do you choose the courses you decide 22 something different. 23 to take? Q But when you signed up for a CLE course, A I look for courses that are offline so 24 you can look at what the topics are going to be; 25 that I can do them without having to travel to go 25 right? Page 58 Page 60 1 see them, and then I just pick the ones I need to 1 A I believe that's the case, yes. So at least the title there, Corporate 2 get my hours. Q You agree that you get to choose what 3 Counsel Seminar, would relate to your work, your career work as a lawyer? 4 courses you want to take? Yes. A Sure. As long as they're accredited with Q Then we have "CHATGPT and Generative AI: 6 Oklahoma, yes. Q No one at the Oklahoma Bar Association has What Lawyers Need to Know." 8 forced you to choose any particular CLE course? 8 A Uh-huh. Q Do you remember taking that course? 10 Q Is it helpful to have the option of taking A I do not. 10 Q Below that is "Part 1, Reg D Offerings and 11 courses that interest you? 11 12 Private Placements, 2023." Do you see that? 12 A Well, certainly. Since I have to do it, 13 I'd like to have ones that interest me, yes. A I do. 13 14 (Exhibit 6 marked for identification.) 14 Q So presumably, that's relevant to your 15 Q (BY MS. HINTZ) Exhibit 6, I'll just 15 corporate work you've done since we've already 16 represent that this is your Oklahoma Continuing 16 established you did EDGAR filings and other 17 corporate filings for Unit; correct? 17 Legal Education Commission Attorney Credit Report. 18 A Okav. 18 A That's correct. 19 Q That the most recent taken date is 19 Q Then below that is "Preserving Privilege 20 December 11, 2023. If you look at the second page, 20 in the Corporate Setting." That, I imagine, is 21 the earliest date is September 20, 2017. Do you see 21 something that's important to you as a corporate 22 that? 22 lawyer? 23 Yes. 23 Uh-huh. It is. Q "Ethical and Practical Risks of Using 24 Do you have any reason to doubt that this 25 Technology: What You and Your Client Need to Know." 25 is your -- an accurate representation of the CLE

Page 61 Is that something that would be relevant I think you testified that you did 2 to your practice as a corporate lawyer? 2 insurance work when you were with Unit, including 3 A I don't know that it is or is not. 3 workers' compensation insurance; is that right? 4 frankly. That's such a broad statement. So it Yes. 5 would be dependent on what they were, I think. 0 And below that, "Legal Ethics in Employee Q Do you remember the course? 6 Benefits: The Fiduciary Exception and Other No, I do not. 7 Practice Dilemmas." Relevant to your practice as a Q But you picked it? corporate lawyer in the human resources area? A Yes, I picked it. A More for my just intellectual knowledge. 10 Q Below that is "West Virginia Versus EPA: 10 Q All right. "Accounting for Lawyers: The 11 Basics and Beyond 2021," relevant to your work? 11 The Future of Climate Change Regulation Under the 12 Clean Air Act." Do you see that? Not really. 12 13 A I do. 13 Q Just intellectual curiosity? 14 Q Do you remember taking that? 14 Uh-huh. A I do vaguely that one, yes. 15 Moving on a couple rows. "M&A Agreement 16 Q Was that something that interested you 16 Survival Guide," you took that in 2020. Was that 17 intellectually or was that relevant to your work? 17 relevant to your corporate practice, mergers and 18 A It was just out of curiosity. 18 acquisition at the time? A That's an area that I had worked in. I 19 Q Below that we have "Record Retention and 20 Information Management for Lawyers: A Modern Guide 20 can't remember the details of that particular 21 for Preserving, Destroying." 21 seminar. 22 A Uh-huh. 22 Well, and shortly thereafter, you were 23 Q That is something that was relevant to 23 negotiating in the bankruptcy with respect to Unit 24 your work as corporate counsel? 24 and its assets; right? 25 A It would be. 25 I wasn't negotiating. Page 64 Q Below that we have "Preparing for the 1 You didn't negotiate that? 1 2 Corporate Transparency Act." Again, pertinent to 2 No. 3 your practice as a corporate lawyer? 3 0 Did you have any involvement in it or A Yes. 4 oversee it? Q Below that, "Lawyers Behaving Badly: How I had involvement, as I was supposed to 6 to Respond to Uncivil and Unprofessional Conduct." 6 sign all the documents, but that was --7 That's probably something that's pertinent to all of Q You did sign all the documents? 8 us as lawyers? 8 The ones they had asked me to sign. A I would think so. And similarly, at the same time, it looks Q Below that, "Letters of Intent: Execute 10 like you took -- in November and December you took 10 11 the Deal, Skip the Courtroom." Is that something 11 M&A was December of 2020, and in November of 2020 12 that would be relevant to your corporate practice? 12 you took "Drafting Asset Purchase Agreements: 13 Minimizing the Most Commonly Disputed Issues." 13 A It could be. 14 Q Below that, "Drafting LLC Agreements: Top 14 Is that accurate? 15 10 Mistakes and Oversights." Relevant to your work? A I did take that. Assuming this is 15 16 A It could be. 16 correct, I took it. 17 Q "Ethical Negotiations: Six Principles for 17 Q It looks like you were interested in that 18 Effective (but Not Deceptive) Advocacy." Relevant 18 topic at that time. Below that, second from the 19 to your work? 19 bottom, "What Litigators Should Know About Contract 20 Drafting," is that something you chose to take? A Relevant to everybody's work. 20 21 Q Below that, "D&O Insurance: Managing 21 Α Yes. 22 Liability in Today's Corporate Climate." Relevant Q Turning to the second page, the fourth one 23 to your corporate legal practice? 23 from the top, "The Conservative Case for Class A It's an area I have to deal with or had to 24 Actions." You took that in January of 2020. Do you 25 remember that? 25 deal with.

Page 65 Do I remember it? No. I think I signed up for a Facebook account 2 2 when it first came out, and I never got back on it. O Is that relevant to your corporate 3 practice? 3 Do you have an Instagram account? Yes. More of an intellectual. I think the same thing. I think I signed Q Below that, "Negotiating Business 5 up when it first came out and never got back on it. 6 Contracts," that's pertinent to your corporate Would it be under your name, Mark Schell, 7 contract? or would it be under some kind of other --Α Yes. No. It should be under my name. Q I'm sorry, corporate legal work, not Q Do you have a Twitter or an X account? 10 corporate contract. 10 Α No. 11 A It would be relevant to my contracts, too. 11 0 You never have? 12 Q Yes, to your contracts you did in your 12 Α Nο 13 corporate practice. 13 Q Are you on LinkedIn? 14 Let's see, ten, ten from the top on 14 Α 15 December 23, 2019, again, "Advanced Mergers and 15 Q Do you maintain a LinkedIn actively? 16 Acquisitions," something you had interest in in 16 Α your corporate work? 17 0 Are you active in any way on any other 18 A Yes. 18 social media accounts? 19 Right below that, "Understanding How No. I don't believe I am. 19 20 Regulation M Applies to your Offering," something Do you follow the Oklahoma Bar Association 20 relevant to your corporate legal work for Unit? 21 on social media? A Not really. Just more of an intellectual, 22 No. 23 just wanting to know. 23 Have you ever reviewed Oklahoma Bar 24 Q You didn't do any Reg M filings? 24 Association's social media accounts? 25 I can't say we never did, but I certainly 25 Δ Page 68 Page 66 1 don't recall doing any. 1 Do you read the Oklahoma Bar Journal? Q You would agree with me that it's helpful 2 Occasionally. 3 to have the option of taking courses that relate to 3 0 Do you get it in paper form or do you look 4 areas in which you practice law? 4 at it online? A Assuming you have to take them, yes. I get, I believe, a notice, an electronic Q Do you contend in this litigation that 6 notice that the Bar Journal is available. When it 7 having CLE courses to choose from violates your was only in paper form, I received it in paper form. 8 First Amendment rights? Q And have you reviewed it since it's been A Because it's a Bar mandated, I do. available electronically? 10 Q That wasn't my question. My question was: 10 I have reviewed some of them, yes. 11 Do you contend that having CLE courses to choose 11 Have you ever submitted an article for 12 from, being able to choose from a variety of 12 publication in the Oklahoma Bar Journal? 13 courses, violates your First Amendment rights? Yes, I think I did. 13 14 MR. FREEMAN: Form. 14 When was that? 15 A Having -- please repeat that again so I Oh, Lord. It was dealing with the Energy 15 16 can --16 Litigation Reform Act, as I recall, and I don't 17 Q (BY MS. HINTZ) Do you contend in this 17 remember when that was passed. But the gentleman 18 was the primary author and he asked since I had 18 litigation that having an array of CLE courses to 19 choose from violates your First Amendment rights? 19 helped work on that legislation, if it would be okay 2.0 MR. FREEMAN: Form. 20 to include my name, and I said fine. 21 A Just having them available, no, I don't 21 Q So was it published? 22 think it does. 22 I believe it was. (BY MS. HINTZ) Are you on social media? Can you put that in any kind of time frame 23 Q 24 Α No. 24 for me? The gentleman that you worked with, was Q Do you have a Facebook? 25 25 that someone you knew at Unit?

proreporters.com

No. No. It was a lawyer down here in 1 <sup>2</sup> Oklahoma City. I don't even recall his name. You 2 Q Are you aware that specific Bar Journal 3 can look it up, the Energy Litigation Report, and 3 articles are challenged in your lawsuit against the 4 Oklahoma Bar Association? 4 see the date of it and that would tell you roughly. Q Was your article published after the act Certain Bar Journal articles? 6 passed? Q Yes. Yes. I'm aware of that. Α 7 Was that a state act or a federal act? What articles are you challenging? It was a state act. A I can't recall all of them off the top of 10 Were you an advocate for that act? 10 my head, but there were several. 0 11 11 What can you recall? I was. 12 12 A I recall that there was, I believe, one Is that something that you lobbied for at 13 the legislature? 13 written by a gentleman who advocated climate change 14 A I did. 14 and suing oil companies. I thought that was highly 15 MR. BURRAGE: While you're pausing... 15 inappropriate. 16 (Discussion off the record.) I don't know if they're included or not in 17 17 the lawsuit because, as I understand it, there's Q (BY MS. HINTZ) Are you aware that the 18 Oklahoma Bar Journal reports court decisions? 18 been some cutoff times, and some articles made it 19 19 and some didn't. I don't recall if some of the ones Yes. 20 20 I'm thinking are in the lawsuit or not, frankly. Do you ever look at the court decision in 21 Oklahoma Bar Journals? Q I think we're working from March of 2017 22 A I sometimes do look at the opinions. 22 forward or April of 2017 forward. 23 Do you object to court decisions being 23 A Yeah, So... 24 published? Q What were your problems with the articles 25 A No, not at all. 25 that you're challenging? Page 72 Q Are you suing the Oklahoma Bar Association I didn't think they were relevant to the 2 because it publishes court decisions in the Bar 2 practice of law. They were advocating policy 3 Journal? 3 decisions. A No. Q Did you read the articles before filing Q Are you aware -- well, are you aware that 5 the complaint that was filed in this action? 6 in addition to publishing the court issues setting A I believe I read most of them. I can't 7 out decisions of Oklahoma courts, the Oklahoma Bar 7 say that I read every one of them. 8 Association publishes Bar Journal issues that focus Q Did you choose which Bar Journal articles 9 on practice issues and areas of law? to list in the lawsuit? 10 A Practices issues in the areas of law? 10 A I chose some of them. 11 I'm aware that they have, yes. 11 Q Did you choose them because you were given Q For example, an issue might be titled "oil 12 articles to look at and you chose from an array of 13 and gas" and its contents relate to oil and gas law 13 articles or you came up with them on your own? 14 issues. 14 A I came up with them on my own. 15 A It could be. 15 Q Are you aware that your lawsuit challenges Q You don't recall seeing those? 16 certain continuing legal education programs? 17 A I know there have been some in the past. 17 18 In fact, I think the one that was published with my 18 Q Did you watch those continuing legal 19 name on it dealt with that. 19 education programs before you filed your lawsuit? 2.0 Q Was it an oil and gas themed issue? 20 A I did not. 21 A I don't know what issue it was published 21 Did you decide which continuing legal 22 under. I could not tell you that. 22 education programs to challenge in your lawsuit? 23 Q You don't have it framed on your wall? 23 MR. FREEMAN: Form.

24

I'm sorry?

Q You don't have it framed on your wall?

A I'm sure I looked at it, but that's been

25 so long, I don't recall the specifics of it at all.

Page 73 Q (BY MS. HINTZ) Well, you didn't watch 1 Please, you need to help me out when you 2 them before you put them --2 say "assisted." A I did not watch them, no, if that was your 3 (BY MS. HINTZ) Did you make edits? 4 question. I'm sure I may have made edits. 5 Q Did your lawyers decide which programs to 5 Have you read or reviewed any part of the 6 challenge in the lawsuit? 6 10th Circuit Court of Appeals order in this case? MR. FREEMAN: Form; foundation. I read it when it came out. Did my lawyers decide? I think we What do you recall about it? 9 discussed those things, but that would be privilege. 9 That part of it survived, part of it 10 So I'm not sure how to answer your question. 10 didn't, and it was sent back down. 11 Q (BY MS. HINTZ) When did you form the 11 Do you recall that the 10th Circuit 12 intent to file the lawsuit at issue? 12 determined that a number of articles that you 13 A I have been considering it for a very long 13 challenged were on their face germane? 14 time. 14 A I don't recall that. I do recall, I 15 Q When did you form the intent to do it? 15 think, that there was a time limit imposed. 16 MR. FRFFMAN: Form. 16 Were you involved in the decision to file 17 When did I form the intent? It would have 17 a second amended complaint? 18 been sometime, obviously, before the lawsuit was 18 I'm sure I was. 19 filed, but I can't tell you exactly how long. 19 And, again, did you assist in drafting the 20 second amended complaint? 20 Q (BY MS. HINTZ) Did you assist in drafting 21 the initial complaint? 21 A I would have reviewed it and made whatever 22 A Did I insist on drafting it? 22 edits I thought might have been appropriate. 23 Assist. Q Did you, again, with the second amended Assist. 24 complaint review any of the continuing legal 25 MR. FREEMAN: Form. 25 education courses that are challenged in the Page 74 Page 76 A I reviewed it and I may have made some 1 1 complaint before it was filed? 2 changes, comments, etc. My recollection is that I had reviewed 2 3 Q (BY MS. HINTZ) You don't specifically 3 several of them. 4 recall? Q You took the course? I didn't hear you say "took the course." A No, I don't. Q Do you recall when it was filed? 6 Reviewing -- let me rephrase it. Did you A As we sit here, no. 7 take the course? Q Did you assist in drafting the amended A Did I take the course? Well, without complaint? 9 looking at them specifically, I couldn't be 10 10 absolutely sure, but I probably did not take the A Again, I'm sure I looked at it and had 11 comments, suggestions, etc. 11 courses, plural. 12 Q But you don't recall? 12 Q Are you aware that your lawsuit challenges 13 the Lexology service offered to Oklahoma Bar 13 A But I don't recall. 1.4 Q Do you know why the complaint was amended? 14 members? 15 A I believe it was because of some rulings 15 That Lexology service, perhaps you need to 16 that were made. I don't recall that specifically. 16 explain that. Refresh my memory. 17 Q You don't have any specific knowledge? 17 Q I would just like to know if you're aware 18 A I did at one time, but I certainly don't 18 of that? 19 now. 19 As you stated it, I'm not aware of it. 20 Q Did you assist in drafting any of the 20 Do you know what the Lexology service is? Q 21 appellate briefing in this case? 21 No. 22 A Again, I'm sure I reviewed it. 22 Do you know what the basis of your First Q But you don't recall whether you assisted 23 Amendment challenge to the Lexology service is? 24 in drafting it? A I'd have to go back and look at it, but I MR. FREEMAN: Form. 25 25 don't recall as I sit here.

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Page 77 Do you recall receiving emails from a 1 and do it. 2 Lexology service? 2 We talked about how I thought that the Bar 3 I received emails from a Lexology service? 3 was active in some of this stuff and shouldn't be. 4 judges were active and shouldn't be, and what we I'm asking if you recall ever having 5 received one. 5 could do about it and what we couldn't do about it, Would they say Lexology? 6 and whether some of the articles that the Bar was I'm just asking what you recall. 7 publishing were appropriate, etc. There were just a I received a lot of emails. Whether I 8 lot of things we talked about. 9 received any from them or not, I don't know. Q You just testified that you discussed 10 Q Is it your contention that when a person 10 that -- I believe the word you used was "judges were 11 reads an article published in the Oklahoma Bar 11 doing that." Uh-huh. 12 Journal, that person could reasonably believe it's 12 your speech? 13 0 What do you mean by "doing that"? 14 MR. FREEMAN: Form. 14 A Like I previously testified, we had one 15 Supreme Court judge apparently come down and 15 When you say me, are you referring to the 16 author of the article? 16 advocate against a bill that was pending, and then 17 17 I know that we had a district court judge call the Q (BY MS. HINTZ) Is it your contention, 18 that when a person reads an article published in 18 head of the judiciary committee at that time and 19 tell him he better not pass that thing. the Oklahoma Bar Association, that person could Q And you recall discussing those with other reasonably believe it is your speech? 20 21 A I see. 21 people? 22 MR. FREEMAN: Form. 22 I do. I recall the discussions. I can't 23 A Yeah. I mean, I think it depends on the 23 recall all the specifics. 24 article. 24 Who did you have the discussions with? 25 25 Well, the one gentleman, he's a lawyer in Q (BY MS. HINTZ) Do you think that the Page 80 1 article that you published back in the day is my 1 Sapulpa, on the work comp thing. I can't recall his 2 speech? 2 name right now, though. It's been too many years A Do I think it's your speech? The article 3 ago. 4 was nothing but an explanation of the law. So it's 4 I don't recall which, whether it was the 5 not really anybody's speech. 5 House or the Senate judiciary committee member that Q You indicated that you thought about 6 told me about Justice Gurich's involvement. 7 filing this lawsuit before it was filed; is that Q You said "the workers' comp thing" just a 8 accurate? 8 moment ago. What did you mean by that? A Yes. The reform effort. I'm sorry. The work 10 O Did you talk about the issues related to 10 comp reform effort. 11 the challenges that you're bringing in your lawsuit 11 So you believe that there was activity 12 with anyone before you filed the lawsuit? 12 before workers' comp was changed? 13 A Yes. I'm sure I did. Activity? 13 1.4 Q Do you remember who you talked to? 14 You said judges were doing it. 15 A I know I -- excuse me. I spoke with a While we were trying to get the reform 15 16 number of people over a time period, legislators, 16 bill passed, there was a lot of activity insofar as 17 lobbyists, other lawyers about various issues and 17 lobbying for and against the bill by various people. 18 then other businessmen that I knew and associated Q And you personally were in favor of the 18 with. There were quite a few people, but to ask me 19 workers' compensation bill? 20 if I remember specifically, I can't. 20 Very much so. 21 What issues did you talk about? 21 And you succeeded. It was revised, it was 22 A We talked about a lot of things. We 22 changed, right, in 2012 or thereabouts? 23 talked about how plaintiffs' lawyers were very 23

24

24 active at the legislature and other -- if you wanted

25 to assert a position, you needed to go down there

Have you ever communicated in writing, by

25 letter or email, with anyone, other than your

Page 85 Q Was it prior to 2015? 1 about any article that you believe violates or, as 2 2 I stated in my question, is not reasonably related Α I don't know. I don't know. 3 But you haven't reviewed bylaws of the 3 to regulating the legal profession or reasonably 4 related to improving the quality of legal services 4 Oklahoma Bar Association this year? 5 Α No. 5 available to the people of the state? 6 Q 2023? 6 MR. FREEMAN: Form. No. A Again, without looking at the articles, it Α would be very difficult to do that. I'd have to go 0 2022? Α No. 9 through and look at them again. 10 Q 2021? 10 Q (BY MS. HINTZ) So you can't do it sitting 11 Α You're getting too far back. I can't 11 here today? 12 recall. 12 A That's correct. 13 Do you challenge any aspect of the bylaws 13 Q Are you aware of any facts that you rely of the Oklahoma Bar Association as a violation of 14 upon to make the argument that any publication is your First Amendment rights? 15 not germane? 16 MR. FREEMAN: Form. 16 A Do I -- say that again. 17 17 COURT REPORTER: "Are you aware of any A Well, I can't recall what's in the bylaws. 18 So I'm unable to say if I do or not. 18 facts that you rely upon to make the argument that 19 19 any publication is not germane?" Q (BY MS. HINTZ) Have you reviewed the rules creating and controlling the Oklahoma Bar 20 A Any facts. Association? 21 MR. FREEMAN: Form. 22 A I think I did, again, some time ago. It's 22 It's an interesting question, but articles 23 not something that would have stuck in my mind. 23 assert position sometimes. Now, when you use the 24 Q You don't recall anything about the rules 24 word "fact," are you talking about things that back 25 creating and controlling, as you sit here today? 25 up that position or just the fact that they made the Page 86 Page 88 1 Δ No. 1 statement? And you don't recall anything about the 2 (BY MS. HINTZ) Something you are relying 3 **on.** 3 bylaws, as you sit here today? A I would rely on their policies, what 4 Α No. 4 5 they're advocating, what they're promoting, what Are you challenging the rules creating and 6 they're fighting against. It depends on the controlling the Oklahoma Bar Association as being violative of your First Amendment rights? 7 article. 8 MR. FREEMAN: Form. 8 Q And when you say "they," who are you Since I can't recall them, I'm not -- I'm referring to? 10 A Whoever wrote the article and whoever 10 not able to answer that question. 11 Q (BY MS. HINTZ) Would you please identify 11 supports the article. 12 every publication of the OBA that you allege is not 12 Would you agree with me that the legal 13 reasonably related to either regulating the legal 13 profession has an ethical obligation to provide 14 legal services to any -- every Oklahoma citizen who 14 profession or reasonably related to improving the quality of legal services available to the people of 15 seeks them? 16 the state? 16 Every lawyer has an ethical obligation? 17 MR. FREEMAN: Object to form. 17 That the legal profession as a whole. 18 The legal profession as a whole. I A Would I identify? 18 Q (BY MS. HINTZ) Yes. 19 19 believe that to be a correct statement. 20 Is that what you said, every article? 20 Q You would agree with me that there may be 21 Every publication that you contend does 21 millions of Oklahomans you would not normally want 22 not satisfy either of those two. 22 to be associated with? A I would have to go back and look at all 23 There are millions of Oklahomans that I 24 the articles to do that. 24 would not want to be associated with. I'm not sure

Q As you sit here today, you can't testify

25 I understand that question.

Page 91 In a sense I am because I don't believe Q You would agree with me that there are 2 Oklahoma citizens that you normally would not want 2 that the Oklahoma Bar is regulating lawyers in the 3 to be associated with? 3 least intrusive means possible. A There are some people I would not want to Q (BY MS. HINTZ) My question is: Are you 5 be associated with. That's correct. 5 challenging the Oklahoma Bar Association's right to 6 adopt rules of professional conduct regulating Q And you would agree with me that each 7 Oklahoma citizen is entitled to competent 7 lawyers? 8 representation in their personal legal matters? MR. FREEMAN: Form. A Yes. A Am I challenging the Bar? 10 Q And you would agree with me that other 10 MS. HINTZ: Can you read it back. COURT REPORTER: "My question is: Are you 11 people's legal matters may involve behaviors or 11 12 views that you do not want to be associated with? 12 challenging the Oklahoma Bar Association's right to 13 A Other people's legal matters. Are you 13 adopt rules of professional conduct regulating 14 talking about positions they're asserting or 14 lawyers?" 15 something like that? 15 MR. FREEMAN: Foundation as well. 16 Q Well, the question is: You would agree 16 A I don't believe I am. 17 that other people's legal matters may involve 17 Q (BY MS. HINTZ) And you would agree with 18 behaviors or views you may not want to be associated 18 me that the rules of professional conduct in 19 with? 19 Oklahoma are adopted and approved by the Oklahoma 20 A That's probably correct. 20 Supreme Court? 21 Q But you would agree with me that lawyers 21 Yes. 22 generally have a legal obligation to provide 22 (Break taken from 12:03 p.m. to 12:12 23 competent legal representation to people who have a 23 p.m.) 24 legal need that they need addressed? 24 Q (BY MS. HINTZ) Mr. Schell, we're 25 MR. FREEMAN: Form; foundation. 25 reassuming this deposition after you had a chance Page 90 Page 92 A Assuming they take that person on as a 1 to have a break; right? 2 client, they certainly do. 2 Yes. That's correct. You know you're still under oath? Q (BY MS. HINTZ) You agree that the 3 4 prevailing legal authorities, the Lathrop case and Α I do. 5 the Keller case, US Supreme Court cases, allow Just a little bit ago we were discussing 6 mandatory bars to regulate the legal profession; 6 the rules creating and controlling the Oklahoma Bar 7 right? 7 Association. Do you remember that? 8 MR. FREEMAN: Form; foundation. A The two cases you mentioned, which ones And I asked you if you had ever reviewed 10 were those? 10 them, and you testified about that. 11 Q (BY MS. HINTZ) The Lathrop case and the 11 That's correct. 12 Keller case. They're cited in your pleadings. 12 You don't have any reason to disagree A And Keller. I thought there was another 13 with me that the rules creating and controlling the 13 14 one. Well, anyway, right now, the status of the Bar 14 Oklahoma Bar Association are promulgated by the 15 is, as I understand it, mandatory bars are --15 Oklahoma Supreme Court, do you? Q My question is that the existing 16 MR. FREEMAN: Form; foundation. 17 prevailing case law allows mandatory bars to 17 A That's my understanding. 18 regulate the legal profession? Q (BY MS. HINTZ) And you testified just 18 19 MR. FREEMAN: Form; foundation. 19 before the break that you agree that the rules of 2.0 20 professional conduct in Oklahoma are approved by the A Yes. 21 Q (BY MS. HINTZ) So you aren't challenging 21 Oklahoma Supreme Court; correct? 22 in your lawsuit the Oklahoma Bar Association's 22 Yes. 23 obligation and right to adopt rules of professional 23 (Exhibit 7 marked for identification.) 24 conduct regulating lawyers; right? 24 (BY MS. HINTZ) Take a second to review 25 MR. FREEMAN: Form and foundation. 25 this.

Mark **Sched** 19-cv-00281-HE Page 93 1 popular participation and support to maintain their All right. 2 Have you had a chance to review it? 2 authority." 3 Yes. I've read this 3 Is that accurate? O You see at the bottom of the second page. That's what it says. 5 in accordance with your prior testimony, it says, it And that continues on; right? I didn't 6 was "amended by order of the Supreme Court, 2007 OK 6 read the whole thing. 7 22; effective January 1, 2008." Do you see that? That's correct. A Yes, I see that. You would agree with me that it's 9 appropriate as Section 2, Paragraph 2 requires that Q And I'll represent to you that this comes 10 directly off of the OSCN, the Oklahoma State Courts 10 an Oklahoma lawyer have a "informed understanding of 11 Network. Are you familiar with that platform? 11 the client's legal rights and obligations." Right? A That's what it says. 12 A Okay. 12 Q Are you familiar with OSCN? 13 13 Q But I'm asking, you would agree with me 14 A Yes 14 that that's important that a lawyer who's advising a Q So this document, Exhibit 7, is Title 5, 15 client is informed, has an informed understanding of 16 Attorneys and the State Bar, Appendix 3-A, Oklahoma 16 the client's legal rights and obligations? 17 Rules of Professional Conduct, Section Preamble, A A Certainly. 17 18 Lawyer's Responsibilities. Do you see that? 18 O Do you agree that every Oklahoman has 19 A I do. 19 legal rights? A Yes, depending on the circumstances. But, 2.0 Q I would like to draw your attention to 20 21 Paragraph numbered 2 where it begins "As a 21 certainly, they do. There are lots of questions at 22 representative of clients, a lawyer performs various 22 times about those legal rights, but they're there. 23 functions." Q And you would agree with me that for a A Uh-huh. 24 lawyer to have an informed understanding, as Section 25 Q The second sentence says, "As advisor, a 25 2 requires, of his or her client's legal rights and Page 94 1 lawyer provides a client with an informed 1 obligations, as Section 2 requires, the lawyer must 2 understanding of the client's legal rights and 2 have knowledge of the particular issue his or her 3 obligations and explains their practical 3 client faces and the client can trust; right? 4 implications." A Yes. 5 Do you see that? 5 (Exhibit 8 marked for identification.) 6 A I do. 6 Q (BY MS. HINTZ) Have you had a chance to Q So do you agree with me that numbered review it? 8 Paragraph 2 of the preamble of the Rules of I have. 9 Professional Conduct requires lawyers to have an Again, I'll represent to you that is 10 informed understanding of their client's rights and 10 pulled straight from the Oklahoma State Courts 11 obligations? 11 Network. You'll see at the bottom of the second 12 A That's what it says. 12 page that this section of the Oklahoma Rules of Q All right. Let's look then at numbered 13 Professional Conduct was amended by order of the 13 14 Paragraph 6, which says, "As a public citizen, a 14 Supreme Court, 2007 OK 22. Do you see that? 15 lawyer should seek improvement of the law, access to 15 A I do. 16 the legal system, the administration of justice and 16 So this particular section of the Oklahoma 17 the quality of service rendered by the legal 17 Rules of Professional Conduct involves the article 18 profession. As a member of a learned profession, a 18 of the client/lawyer relationship, and the rule at 19 lawyer should cultivate knowledge of the law beyond 19 issue is Rule 1.1 which addresses competence. Do 20 its use for clients, employ that knowledge in reform 20 you see that?

21

A Uh-huh. I do.

21 of the law and work to strengthen legal education."

23 public's understanding of and confidence in the rule

25 institutions in a constitutional democracy depend on

24 of law and the justice system because legal

"In addition, a lawyer should further the

22

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Q The very first paragraph there,

23 substantive paragraph where it says, "Rule 1.1,

25 competent representation to a client. Competent

24 Competence," it says, "A lawyer shall provide

1 representation requires the legal knowledge, skill, 1 in this area? 2 thoroughness and preparation reasonably necessary 2 A I think it comes down to what that article 3 for the representation." 3 or information is, frankly. Q Well, I'm asking the question. If an Did I read that accurately? 5 A Yes. 5 article explains how existing laws may be unequally 6 applied to different groups of Oklahomans, can that Q And then looking at section numerically 7 numbered 6 there on the second page of the Rules of 7 help a lawyer maintain skill in representing 8 Professional Conduct says, "To maintain the 8 Oklahomans? 9 requisite knowledge and skill, a lawyer should keep MR. FREEMAN: Form. 10 abreast of changes in the law and its practice, 10 A I think if it's just the law that's 11 engage in continuing study and education and comply 11 applied, yes, I agree with that. 12 with all the continuing legal education requirements 12 Q (BY MS. HINTZ) If a lawyer has a civil 13 to which the lawyer is subject." 13 rights practice, do you agree that articles 14 And then it continues on. Do you agree 14 explaining disparities in application of existing 15 with that? Did I read that accurately? 15 laws might help that lawyer maintain competence in 16 16 his field? 17 Q And, again, you would agree with me that 17 A It could. 18 it's appropriate that a lawyer is competent in the 18 Q You testified earlier that you discussed 19 area as to which he is going to represent his 19 the lawsuit and provided copies of documents related 20 to the lawsuit to OCPA and -- an OCPA member and 20 client; right? 21 A Yes. 21 what was the Federal Bar Association you mentioned? 22 And you would agree that to provide Federalist Society. 23 competent representation, a lawyer must maintain a 23 Federalist Society; right? 24 requisite knowledge and skill and keep abreast of A I think what I testified, I discussed it 25 changes in the law and practice as the rule states; 25 with those people. Whether I said I actually gave Page 100 Page 98 1 right? 1 them all a copy of the lawsuit, I'm not sure, but I A That's what it says, yes. 2 did give several people copies of the lawsuit. Q But you agree that that makes sense, Q Since we took a little break, do you 4 remember the name of the person at the OCPA that 4 right, to be competent, you have to keep abreast of 5 changes in the law? 5 you discussed this litigation with? A No, I don't. It will come to me A I agree with that statement. Q And maintain a requisite knowledge and 7 eventually. 8 skill to do so? 8 Was it a man or a woman? A I agree with that statement. It was a man. 10 10 Q And do you agree that having access to Do you recall the nature of your 11 articles that contain information about updates in 11 conversations? 12 the law can help a lawyer maintain the requisite 12 A No. I just know that he felt the same way 13 skill and knowledge in his area of practice? 13 I did about a lot of this. So I just shared the 14 A That those articles that discuss the 14 lawsuit with him. 15 changes in the law, yes, I agree. 15 Q Did the OCPA or its membership encourage Q Do you agree that having access to 16 you to file the lawsuit? 17 articles that contain information explaining the 17 18 history and development of laws can help a lawyer 18 Q Did the Federalist Society encourage you 19 maintain the requisite skill and knowledge in his 19 to file the lawsuit? 20 area? 20 Α Nο. 21 A It's possible they do, yes. 21 Did any member of the Federalist Society 22 Q Do you agree that having access to 22 encourage you to bring a lawsuit?

23

24

25 your lawsuit?

23 articles that explain how existing laws may be

24 applied to different groups of Oklahomans can help

25 a lawyer maintain the requisite skill and knowledge

Q Is the OCPA or Federalist Society funding

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Page 21 1 They're also available on OSCN, and they are 2 available in the statutes of the State of Oklahoma 2 Q I think you mentioned earlier that they 3 in Title 5. 3 had issued a resolution. I've already forgotten Q Is the House of Delegates primarily 4 what it was about. Maybe it was about dues, 5 responsible to manage the day-to-day operations of 5 increasing dues. 6 the Bar? Is that the kind of -- is that a matter in A No. 7 which the House of Delegates makes policy decisions 8 or pronouncements? Who is? The executive director. 10 Who does the executive director report to? 10 Q Is the House of Delegates, can it make 11 The Board of Governors and the Supreme 11 policy pronouncements about anything it wants or is 12 Court 12 it constrained in some way? 13 Q And who comprises the Board of Governors? 13 A Well, it's constrained, yes. 14 A The Board of Governors is made up of 17 14 Q In what sense? 15 members. There are four officers and the chair of Well, for example, there is a, within the 16 the young lawyers division, seven or nine members 16 bylaws, something known as the legislative agenda 17 are from the nine Supreme Court districts that 17 that sets forth what those constraints are. 18 existed prior to the latest statutory changes on 18 There's a resolutions committee that meets 19 Supreme Court districts, and then the remainder are 19 and determines whether something would be proper for 20 at large. 20 the presentment to the House of Delegates and, of 21 Q How does one get on to the Board of 21 course, everything that's done there is subject to 22 Governors? 22 control of the Supreme Court. 23 A By filing a nominating petition, and if Q So if the House of Delegates were to issue 24 unopposed, you are deemed elected, and otherwise 24 a resolution on some policy issue, the Supreme Court 25 you will be elected by the House of Delegates. 25 could effectively nullify that resolution? Page 24 1 Q You mentioned that the Supreme Court has Yes. 2 superintending control of the CLE requirements; 2 Q I think you mentioned a -- you 3 is that correct? 3 mentioned -- forgive me if I'm not reciting it back  ${f 4}\,$  to you exactly, but they issue policy positions on A The Oklahoma Supreme Court rules of 5 mandatory continuing legal education. 5 legislation; is that right? Q Those are promulgated by the Supreme A They have. 7 Court? Okay. Can you recall the last time 8 Yes. 8 they've issued a policy position on legislation? Who or what is responsible for policing 9 10 members meeting the CLE requirements? 10 Okay. What did that concern? 11 A The Oklahoma Supreme Court. 11 Three measures relating to trust. 12 So do lawyers in this state yearly have to 12 Q What kind of trusts? 13 report the amount of CLE or affirm or attest that It would be personal, testamentary. I 13 14 they've satisfied the requirements? 14 don't practice in that area, so I don't know the 15 Not all of them. 15 exact terms. Who does and who doesn't? Sure. So like in the area of trusts and 17 A The Bar Association tracks most of the 17 estates? That's a class I think I took in law 18 school. 18 members and sends out an email at the end of the 19 year telling them that they successfully completed 19 Yes. Yes. 20 it, and the folks who haven't completed it at that Do you recall what the policy position the 20 21 point and haven't gotten their information in after 21 House of Delegates issued on that subject matter? 22 the first of the year would have to file a report 22 Yes. 23 23 showing compliance. What was it? Q Is the House of Delegates the It was to recommend that it be placed on 25 the legislative agenda. 25 policy-making arm of the Bar Association?

1	Page 29 MS. HINTZ: Same objection.	1	of litigation or legislation? I'm sorry.	
2	Q (BY MR. FREEMAN) Does the Oklahoma Bar	2	A Well, since I don't believe anybody has	
3			ever taken advantage of it, I can't answer that	
4			question.	
5	Q And one of them is a legislative	5	Q Okay. But I think you did mention that	
			was something, other than monitoring, that a	
7	A No.		legislative monitoring committee has done.	
8	Q Any subgroups or committees that concern	8	A Yes. I'm sorry. It's the offer. I don't	
9	legislation?		know that they I don't believe they've ever done	
10	A The legislative monitoring committee.		that.	
11	Q Do you know what the legislative	11	Q That's what I understood you to say.	
12	monitoring committee does?	12	Right.	
13	A Yes.	13	Has the legislative monitoring committee	
14	Q What does it do?	14	done anything else aside from the two subjects we	
15	A It monitors legislation.	15	just talked about?	
16	Q For what purpose?	16	A They have some they have two life	
17	A To keep the members apprised of any	17	programs.	
18	potential changes in the law that might affect	18	Q Has it proposed amendments to bills	
19	their practice.	19	pending in the legislature?	
20	Q So it could be it's not any	20	A No.	
21	particularized area of the law. It's any change of	21	Q Has it signaled the Bar's support or	
22	the law that could affect the practice of members?	22	opposition to a bill pending in the legislature?	
23	A Yes.	23	A No.	
24	Q How does it convey that information to	24	Q Does the Oklahoma Bar Association have a	
25	members?	25	retained lobbyist?	
1	Page 30 A There are two programs that are put on,	1	A No.	
	and during the course of the session there are	2	Q Who is Clayton Taylor, Jr.?	
	particular bills or resolutions that may be	3	A He's a legislative liaison. I know he is	
	publicized either through the website or one of the		a registered lobbyist, but he was hired as, to my	
	publications.			
6	Q And the legislative monitoring committee's	6	Q Okay. And we'll probably come back to	
7	role is simply to monitor; is that correct?	7	this later, but who retained him? The Bar	
8	A Yes. At times they have done other	8	Association?	
9	things, but it's to just it's mainly to monitor.	9	A Yes.	
10	Q Okay. And those times when it's done	10	Q And how long has he been a legislative	
11	something other than monitor, what did it do?	11	liaison retained by the Bar?	
12	A There were times that it offered to	12	A I don't recall the exact year. Everything	
13	provide lawyers with expertise in subject matter	13	in my head runs by who is president at a time. I	
14	areas to answer questions or concerns that members	14	worked off of that mindset of who as opposed to the	
15	of the legislature may have.	15	exact date of something.	
16	Q Okay. So it would facilitate maybe	16	Q The Bar president, not President Obama or	
17	hooking up a legislator with some lawyer whose	17	something?	
18	practice area relates, perhaps, to a piece of	18	A Well, yeah.	
19	legislation that member might be working on?	19	Q Okay. What's your understanding of	
20	A I think that was the intent.	20	Mr. Taylor's duties and responsibilities?	
21	Q Is there does the legislature in	21	A To review legislation, advise the	
22	doing that, in facilitating subject matter	22	leadership of the Bar Association and to have	
23	expertise, making that available to a member of	23	whatever discussions that he may need to have with	
24	the legislature, does the legislative monitoring	24	members of the legislature.	
25	committee consider the subject matter of the piece	25	Q So he is authorized to have discussions	

# EXHIBIT 4

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1
                   UNITED STATES DISTRICT COURT
 2
                               FOR THE
 3
                   WESTERN DISTRICT OF OKLAHOMA
 4
 5
     Mark E. Schell,
 6
               Plaintiff,
                                               Civil Action No.
 7
                                               19-00281-HE
     vs.
 8
     Janet Johnson, et al.,
 9
              Defendants.
10
11
12
            DEPOSITION OF CLAYTON CHARLES TAYLOR, JR.
13
                      Oklahoma City, Oklahoma
14
                         February 14, 2025
15
16
17
18
19
20
21
22
23
    Prepared by:
24
    Gerard T. Coash, RPR, RMR
    Certified Reporter
                                               TRANSCRIPT
    Certification No. 50503
25
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Page 29

### Page 26 1 presentation? 1 really narrow because it could get really broad. There's A. We do have a legislative kickoff, yes, sir. 2 so many different issues that, you know, kind of bleed Q. Right. Is that something -- is that a 3 into the legal community that I -- I feel like I try to 4 presentation that is given to the -- the Oklahoma Bar 4 keep people aware of but it's not, you know, totally -- I 5 Association board of directors or is it to the public? 5 try to keep it narrow for our issues, if that makes sense. A. I think it's open to all Bar members. 6 Otherwise, I could be chasing my tail around. There's 7 And honestly, I don't know -- go ahead, 7 3,900 pieces of new legislation introduced every 8 sorry. legislative session, just about. 9 Q. I was just going to say, is that something that Q. Again, just focusing on last year, I think you 10 you're required to do per your contract with the Oklahoma 10 said you don't recall what those bills were last year, 11 Bar Association? 11 correct? 12 A. No, sir. 12 A. Yes, sir. Apologies. When the legislature is in session -- let's just 13 Q. But do you recall being tasked to take any 14 think of last year, 2024 session -- are you able to say 14 specific action with respect to any bills that were of 15 how much time during any given week you would devote to 15 interest to the Bar last year? 16 Bar issues as opposed to your other clients? 16 A. It did happen, the specifics of those 17 A. Honestly, no. 17 conversations, forgive me. There's just so many of them Q. Thinking again about 2024, were there any bills 18 about so many different issues. 19 before the legislature that the Bar specifically tasked 19 Q. No -- and I get it. I'm just trying to test your 20 you to monitor? 20 memory here on this. 21 21 A. I'm sure --Do you recall last year being -- the Bar 22 22 asking you "You need to go speak with legislators about a Q. Can't hear you. 23 A. We think it might be a connection issue of some 23 piece of legislation"? A. I -- I don't know that I even get that direct 24 kind, guys. Sorry. Am I back? The answer to that -- please ask the 25 25 conversation. You know what I mean? I don't know that it Page 27 1 question again, I'm sorry. 1 is ever, hey, X, go talk to Y. It is, "Hey, this is a 2 bill out there. Can we figure out what's going on with Q. In 2024, during that legislative session, were 3 there any bills before the legislature that the Bar had a 4 particular interest in you monitoring? Does that make sense? 5 A. I'm sure there were. 5 Q. Right. Have you been asked -- again, we'll just 6 Q. Okay. Do you recall what those were? leave it in 2024 right now. 7 A. Not off the top of my head. Were you asked to engage in any sort of bill 8 crafting or proposing amendments to bills? Q. Does the Bar typically have legislation that 9 they're asking -- particular legislation they're asking A. I typically do not get involved in kind of 10 you to monitor in any given year? 10 crafting of legislation. 11 A. I'm not sure I quite understand. 11 Q. Have you in your career? 12 The question is -- could you reframe the 12 A. God, it would be -- I mean, sure -- I'm sure it's 13 question? 13 happened before. But my job is to bring lawyers in the 14 Q. Well, let me put it a better way. 14 room who can write -- you know what I mean? -- that 15 So last year you know that there was 15 actually write stuff for a living, so . . . 16 legislation they wanted you to watch, correct? Q. Have you -- when you say bring the lawyers to the 17 A. Yes, sir. Yeah, when bills got introduced last 17 table, does that mean bringing something that the Bar 18 year, we identified legislation that fit the parameters of 19 things I should keep my eyes on, yes, sir.

18 might have suggested and presenting that to the member of 19 the legislature? 20 A. No. I think I'm speaking too broadly there. I'm 21 kind of talking about my practice in general. You asked 22 if I had typically written anything in the past, and I was 23 kind of thinking more broadly for any of my clients. And 24 the answer is no. I typically try to let lawyers -- you 25 know, lawyers who practice in those areas, regardless of

Okay. What are the parameters -- what are those

Basically, like, access to justice, kind of, you

23 know, those broad things. Anything touching the judicial

24 nominating commission, how -- how the courts kind of get 25 constructed. And, you know, there's -- I try to keep it

20

22

21 parameters?

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### Page 30

- 1 who the client is, do that writing for it.
- Q. Again, just on last year for now, were you asked
- 3 to state a position on behalf of the Bar either in favor
- 4 or opposing a piece of legislation?
- 5 A. I do recall that the Board of Governors did vote
- 6 to take a position on several pieces of legislation. I
- 7 don't remember what they were.
- 8 Q. How would they communicate that to you? Meaning
- 9 how would they let you know the Bar is in favor or --
- 10 A. Typically a call from the executive director.
- 11 Sorry, I didn't mean to -- my apologies for
- 12 speaking over you there.
- 13 Q. So that would be by phone call typically?
- 14 A. Typically.
- 15 Q. And then -- hypothetically speaking, last year,
- 16 if the Bar asked you to relay sort of the Bar's support
- 17 for legislation X, how would you do that at the
- 18 legislature?
- 19 A. It just depends on what the subject matter is.
- 20 It's a broad -- I mean, anything from verbal
- 21 communications in person to email communications or
- 22 anything in between are kind of how I communicate with the
- 23 legislature, depending on what the subject matter and the
- 24 need is in the case.
- 25 Q. Does Oklahoma have -- I'm thinking about

## Page 32

Page 33

- 1 with members of the legislature to discuss that particular
- 2 issue?
- 3 A. Do I recall the specific meeting? No. Do I know
- 4 that those meetings occurred? Yes.
- 5 Q. And was that --
- A. And let me say -- let me define "meeting" for you
- 7 a little bit broadly. I just want you to get kind of --
- 8 you probably understand this, but meetings for me often
- 9 typically happen in a hallway outside somebody's office
- 10 with like 55 people around, but those are how our
- 11 conversations happen.
- 12 Q. Yeah, I got a sense of what your life is like for
- 13 sure.

14

17

21

25

- Hold on a second. Excuse me.
- 15 So while you don't recall any specific
- 16 meetings, you know that they did occur last year, correct?
  - A. I would say conversations occur.
- 18 Q. Okay. And was one of the points of those
- 19 conversations to relay the Bar's position as to the
- 20 judicial nomination and selection process?
  - A. I mean, yes. That's kind of a crude way of
- 22 putting it. I don't mean to call your framing of it
- 23 crude, but yeah. I mean, that's a broad way of describing
- 24 it.
  - Q. Other than bills related to the judicial

# Page 31

- 1 Arizona's system now. But does the Oklahoma legislature
- 2 have a sort of formal system where parties can -- and
- 3 individuals -- can sort of log their support or opposition
- 4 to a particular bill?
- 5 A. There is no real formal public comment whatsoever
- $\ensuremath{\text{6}}$  involved in the Oklahoma legislative process.
- 7 Q. Was judicial selection -- the judicial selection
- 8 process on the legislative agenda last year, 2024?
- 9 A. Yes.
- 10 Q. Is that --
- 11 A. Can you clarify -- can you specify that a little
- 12 bit more? Because judicial selection process is a pretty
- 13 broad topic.
- 14 Q. Modifying the way judges are nominated and
- 15 appointed to their positions?
- 16 A. Yes, sir.
- 17 Q. Okay. And that was part of last year's
- 18 legislative drama, so to speak?
- 19 A. I have vague recollections of that subject matter
- 20 being one of the many thousands of fights I was in last
- 21 year at the capitol, yes, sir.
- 22 Q. And that is a subject of interest to the Oklahoma
- 23 Bar Association, correct?
- 24 A. Yes, sir.
- 25 Q. And so did you -- do you recall last year meeting

- 1 nominating and selection process -- and I'm going to --
- 2 let's maybe look back instead of one year to five years.
- 3 Can you recall any other bills that the Bar
- 4 had a particular interest in having you down there talking
- 5 with members about?
- 6 A. Not in particular. I mean, that's kind of pretty
- 7 much the central theme to our work is around access to
- 8 justice is what I would call it in what you would call
- 9 kind of making sure we have quality judges in Oklahoma,
- 10 that kind of seems to be the themes. And typically the
- 11 legislation that is in those subject matters relates to
- 12 the judicial nominating commission more often than not.
  13 I don't know that there are a lot of other
- 14 things I can think of over time that we have really gotten
- 15 involved with. I could be wrong. But it just doesn't --
- 16 I mean, that's kind of the central theme of what we've
- 16 I mean, that's kind of the central theme of what we've
- 17 worked on.

- 18 Q. All right. Let me see if I can figure out how to 19 share documents here.
- 20 A. And we have, I think, pulled up your exhibits.
- 21 So if you do want to tell us what it is --
- 22 THE WITNESS: Is that what this is, Gary?
- 23 MR. WOOD: Yeah.
  - THE WITNESS: If you want to tell us what
- 25 exhibit number you're looking at, we can also try to pull

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Page 34
                                                                                                                  Page 36
 1 it up here.
                                                                      A. Yes. And then -- I mean, I think sometimes we
 2
                 MR. FREEMAN: I want to make sure everyone
                                                               2 have members -- I don't -- I don't want to say that
 3 can -- yeah, I will.
                                                               3 they're members or the public there. But I don't know
                 THE WITNESS: Perfect.
                                                               4 that we would prohibit somebody from walking in off the
                 MR. FREEMAN: I don't know what people can
                                                               5 street that wanted to participate in this. Does that make
 5
                                                               6 sense?
 6 see now.
 7
                 THE WITNESS: I see the beginning of a slide
                                                               7
                                                                      Q.
                                                                          Yes.
                                                               8
 8 show from March 6, 2018.
                                                                                And where is that conducted?
 9
                 MR. FREEMAN: Okay. Heather, can you see
                                                               9
                                                                      A. At the Bar Association.
10 that as well?
                                                              10
                                                                      Q. Okay. And this says "Clay Taylor, Taylor Capitol
11
                                                              11 Group, LLC." Do you see that?
                 MS. HINTZ: Yes.
12
                 (Deposition Exhibit 1 was marked for
                                                              12
                                                                      A. I do.
13
         identification.)
                                                              13
                                                                           Was that the entity you were operating under as
                                                              14 of 2018?
14 BY MR. FREEMAN:
15
       Q. Okay. So what I've done is I've pulled up what
                                                              15
                                                                      A. Yes.
16 we've sort of premarked as Exhibit 1 to today's
                                                              16
                                                                          Is that your LLC or is that your dad's or both?
17 deposition. And I'm going to scroll around here and just
                                                              17
                                                                      A. That is -- that is me. Yes, that's me. Just me.
18 looking at the Bates label. I'll represent to you this is
                                                                      Q. Does the Taylor Capitol Group still exist?
                                                              18
19 one of the documents that you produced to us. It's Bates
                                                              19
                                                                          It does.
20 labeled TAYLOR.001. Do you see that?
                                                              20
                                                                          Okay. Does it do anything other than lobbying?
21
       A. Yes, sir.
                                                              21
                                                                      A. No. No, it doesn't.
                                                              22
           Okay. And as you point out -- you recognize this
                                                                                Sorry, there's -- my wife is also in the
23 document, correct?
                                                              23 business, so I was trying to make sure there wasn't
       A. I do.
24
                                                              24 anything else that she had contracted me out for that I
25
       Q. You're able to, in your office, scroll through
                                                              25 wasn't aware of. But no, it's just a lobbying business.
                                                   Page 35
                                                                                                                  Page 37
 1 the whole thing. I mean, I can do it here, too, but --
                                                                      Q. Okay. I'm just trying to figure out what that
                                                               2 is.
       A. Oh, yeah. He's -- yeah, we can do that now here,
 3 too, yes, sir. This is going to be a lot of information
                                                               3
                                                                      A. You're good. Sorry.
 4 now. We've got it going two places.
                                                                          And representing the Oklahoma Bar Association,
       Q. Well, I'm going to try and make it simple.
                                                               5 correct?
 5
       A. Got it.
                                                                      A. Correct. That's what it says.
 6
 7
            See how well that goes.
                                                                      Q. Is this sort of a yearly thing, ritual you would
 8
                 So what -- what is this document?
                                                               8 do every time, this year?
       A. A slide show that I put together for one of
                                                               9
                                                                      A. Yes. Yes. Give or take.
10 those -- I think what we called legislative kickoff days,
                                                              10
                                                                          Do you --
11 or one of those, I think. Yeah, March -- no -- okay,
                                                              11
                                                                      A. Go ahead, sorry.
12 that's not what this is going to be. This is March 6. So
                                                                      Q. Do you have one coming up next month, similar
                                                              12
13 this is going to be like legislative day at the capitol
                                                              13 presentation?
14 actually.
                                                                      A. Might be on my calendar. I cannot recall if it's
                                                              14
                                                              15 on my calendar yet. I infrequently am aware of these
15
       Q. Okay. And maybe that's what I was thinking of,
16 legislature day at the capitol.
                                                              16 things at a time sufficient ahead of time, if that gives
17
       A. And then forgive me. I didn't mean to stump you
                                                              17 you an idea. They sneak up on me is the best way to put
18 on Law Day. But I think Law Day may actually be something
                                                              18 it.
19 else also specific that we do. So that's why I wanted to
                                                              19
                                                                      Q. Okay. I just scrolled to the fifth page.
20 clarify.
                                                              20
                                                                      A. Right.
21
       Q. Okay. Now, who was this presentation meant for?
                                                              21
                                                                      Q. It's headed "Bills To Pay Attention to." Do you
22
            Members of the Bar Association.
                                                              22 see that?
            Okay. So this is a meeting that just included
                                                              23
                                                                      A. Yes, sir.
24 any member of the Bar Association that wanted to show up
                                                                      Q. Recognizing this was 2018, my question is why --
25 and attend?
                                                              25 there's three bills listed on this slide, and if you have
```

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### Page 38

- 1 any recollection as to why they are listed?
- A. I mean, as I look at them, they seem to be
- 3 interesting to practitioners of law in the state of
- 4 Oklahoma, if that makes -- if that make sense. Like,
- 5 people who are coming in, attending, who are trying to
- 6 consume information about what's going on with the
- 7 legislature. I think this topically might be of interest
- 8 to them.
- 9 Q. These weren't necessarily bills or resolutions --
- 10 current resolutions that the Bar had specifically tasked
- 11 you to follow?
- 12 A. I would say the Bar had nothing to do with any of
- 13 these. These are more just Clay Taylor thought these were
- 14 interesting to lawyers and you should -- in case you
- 15 practice in these areas or whatever, just know that
- 16 they're going on out there.
- 17 Q. Would you preview this slide show to Mr. Williams
- 18 before giving this presentation?
- 19 A. I would not preview it to anybody. I mean, they
- 20 would get it ahead of time if I knew to get it to them
- 21 ahead of time. But sometimes they would get it when I
- 22 walk in the room. So nobody -- nobody's giving editorial
- 22 wain in the room. So hobody hobody 5 giving cartoria
- 23 commentary on any of this that I know about. Although, I
- 24 mean, for all I know -- it's happened over so many years,
- 25 I just can't really tell you, you know, every time it's

## Page 40

- 1 of the United States who works over at the capitol. In my
- 2 expert opinion, I feel like that's good advice. But
- 3 anyway, yes, sir. Not any way associated with what the
- 4 Bar is telling me.
- Q. On the 11th page -- and you were cutting out a
- 6 little bit on that one. "But Why is This Important?"
- 7 First bullet, "As you all know, far better
- 8 than I, everything the legislature does impacts the
- 9 practice of law in the state of Oklahoma."
- 10 Sorry. Again, that's Clay Taylor, citizen
- 11 of the United States, speaking there?
- 12 A. Yes, sir.
- 13 Q. Okay. All right. Let me --
  - A. Pardon me. It's getting warm in here. I'm
- 15 losing my jacket.
- 16 (Deposition Exhibit 2 was marked for
- 17 identification.)
- 18 BY MR. FREEMAN:
  - Q. So I'm showing you what we've marked as Exhibit 2
- 20 to today's deposition, which the first page is Bates
- 21 labeled TAYLOR.013. Do you have that one up in front of
- 22 you?

14

19

- 23 A. I see it on your screen, and we've got it up here
- 24 as well. Thank you.
- 25 Q. Okay. And I'll just quickly kind of scroll

## Page 39

- 1 happened.
- Q. A couple more slides with bills to pay attention
- 3 to, but they're the same comment on all those?
- A. Again, I tried to fill the space with things that
- 5  $\,$  I think people would be interested in and tried to make it
- 6 somewhat topically interesting. You know, it's more than 7 just -- I want people to feel like they got some value out
- 8 of their time, and I don't want to bore them to death with
- 9 just everything that, you know, is process. I want to
- 10 give them some color. So anyway.
- 11 Q. Do you view this presentation as more of a
- 12 marketing thing for you, or is this something that you're
- 13 obligated to do by one or more of your clients?
- 14 A. I kind of see it as marketing. It's -- I feel
- 15 like -- I don't know. I just feel like it's part of my
- 16 duty as a lawyer who practices over at the capitol to
- 17 show -- to kind of give some insight over there. And it
- 18 has -- I mean, yeah, it's good for my business to be out
- 19 there and be seen by people.
- 20 Q. Page 8, there's a bullet point there, "We need to
- 21 do a better job of encouraging our colleagues to run for
- 22 the legislature, and then to help them get elected."
- 23 That is your personal opinion then you're
- 24 sharing with them?
- 25 A. That is me, Clay Taylor, yes, as a free citizen

- Page 41
  1 through it, but make sure we're looking at the same thing.
- 2 It's kind of long.
- 3 Okay. So it's titled "OBA Legislative
- 4 Kickoff 2021." Do you recognize this document?
- 5 A. I do, yes, sir.
- Q. Okay. What is it?
- 7 A. That is the PowerPoint I put together for the
- 8 2021 legislative kickoff.
- 9 Q. That would typically be presented in February
- 10 then?
- 11 A. It's typically like the Friday before session
- 12 starts, the last Friday in January usually.
- 13 Q. And on the first slide there it says "Clay
- 14 Taylor, OBA Legislative Liaison." Do you see that?
- 15 A. I do.
  - Q. Okay. Any reason why it says "liaison" and not
- 17 "lobbyist"?

16

- 18 A. I wish I could tell you. No, honestly.
  - Q. And one of the reasons why I ask is I know I was
- 20 in an organization where we retained a lobbyist one time,
- 21 but his job was purely to report. And --
- 22 A. Right.
- 23 Q. -- so he's kind of just relaying and a filter for
- 24 information. It wasn't to meet with anyone or talk with
- 25 anyone or --

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### Page 42 Page 44 A. Yeah. 1 Could we just take a break real quick? 2 MR. FREEMAN: Okay. 2 -- testify or anything like that. I might 3 consider that person a liaison. (A recess ensued.) But you do -- you do more than just report, 4 BY MR. FREEMAN: Q. Do you remember what the question was? 5 correct? 5 6 A. Yes, sir. A. It was confusing me. You had my bill strategy Okay. If you need to get in there and talk with 7 slide up and it had me all kinds of flummoxed. That's all I -- you were asking me about strategy. 8 the legislators, you will, correct? A. Yes, sir. 9 Q. Well, I guess in the abstract basically. 10 And that's part of the services you offer the 10 Has the -- the Bar Association, as your 11 Oklahoma Bar Association, correct? 11 client, discussed -- at any time when they've been your 12 A. Yes, sir. 12 client -- discussed a strategy with you whereby the 13 Scroll to page 42. 13 objective was to kill a bill, basically, that was before (An off-the-record discussion ensued.) 14 the legislature? 14 15 BY MR. FREEMAN: 15 A. Sure. Yes, sir. 16 Q. Okay. So back to our exhibit, Exhibit Number 2. 16 0. That's happened? 17 And I scrolled down to the page Bates-labeled TAYLOR.042. 17 Α. Yes. A. We're there. 18 18 Q. Okay. Do you remember bills that the Bar has 19 O. You with me? 19 asked you to kill? And it's titled "Let's Talk Strategy." Is 20 A. Not specifically, no. But I mean, that's -- I 20 21 that something that you would -- would you discuss a 21 mean, those bills we were talking about from last session 22 strategy with the Oklahoma Bar Association before each 22 would fall under that category, I'm sure. Things to 23 legislative session? 23 either -- and when you say kill, let's be -- let's be A. I mean -- I'm not sure I follow the question. 24 clear. That's probably too harsh of a term. Engage on, 24 25 So this -- only because this slide confuses 25 kill, work on in some way. Page 45 Page 43 1 me. This is just kind of a slide talking about the Q. Right. I was speaking colloquially. 2 strategizing using the process. So I'm sorry, it's just A. I would say -- probably the better way to say is 3 confusing me a little bit. I'm sure we talk strategy 3 the bills that impede some of our priorities, like access 4 about legislation as it comes up, yes, sir. 4 to justice or how we think the best judges are picked. Q. And so -- so you've had strategic conversations 5 They will ask me to engage on and we will strategize about 6 with the Bar about legislation. Is that fair? 6 the best way to work on those things. A. I mean, I think that every -- every conversation Q. So I mean -- okay, so how judges are selected, 8 when you're talking about legislation has some strategy 8 that's one category. You mentioned access to justice. 9 involved with it, so -- I mean, sure. 9 What falls under access to justice? And I guess -- to me, that means something more 10 A. God, that's probably a better -- that's a good 11 than just reporting on it. It's a strategy because 11 question. 12 there's a result you want at the end of the day. Is that 12 I would -- I think of it as also kind of --13 that the courts -- the construction of the courts, making 14 sure -- when I say access to justice, I'm really, in my 14 A. Sure. I'm not totally sure I follow the 15 brain, saying that everybody has access to the best, most 15 question, but yes, sounds right. Well, I guess you wouldn't need -- if the qualified impartial judge that they can have access to. 17 strategy -- I guess the strategy could be tell us 17 (Deposition Exhibit 7 was marked for 18 everything that's happening at every moment about bill X. 18 identification.)

24 strategy is kill this bill on our behalf"?

A. Hold on one second.

21 kind of strategy.

22

19 I guess that could be categorized a strategy. A strategy

20 could also be let's do everything we can to kill this bill

23 you ever had instances where the Bar said, "Hey, our

In your work for the Bar, did you -- have

21 now to Exhibit 7. This is Bates-labeled TAYLOR.125. So

22 that's telling me it came from your file.

Q. Do you recognize this document?

19 BY MR. FREEMAN:

A. Yeah.

A. I do.

20

23

24

Q. I'm going to skip to Exhibit 7. So I'm skipping

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Cla	lyton Charles Taylor, Jr. February	14	14, 2025 /0	/3
	Page 70		Page 7	2
1	president at whatever during whatever legislative	1	1 I'm wrong is that the OBA legislative kickoff is an	
2	session?	2		
3	A. It kind of depended on the president. Some	3		
4	presidents are people who want to talk and some presidents	4		
5	aren't.	5		
6	Q. Talk in terms of strategy or just they like to	6		
7	gossip about what's going on at the capitol?	7	•	
8		8		
١.				
9	more interested in those things or, you know, somebody	9	•	
10	who's more typically interested in courthouse, right?	10		
11	They're kind of just different flavors.	11		۲
12	Q. Did you ever did you interface with a	12		
13	legislative committee of the Bar?	13		
14	A. No, not really.	14		
15	Q. Have you ever received any kind of performance	15	•	
16	review or evaluations from the Bar?	16	3, 11	
17	A. I am unaware.	17	~	
18	MR. FREEMAN: Okay. That's all I wanted to	18	18 that starts with TAYLOR.013, you prepared that?	
19	go over with you, appreciate your time.	19	l9 A. Yes, sir.	
20	Heather, I'll turn it over to you if you	20	Q. Was any of the content of that directed by the	
21	have any questions.	21	21 OBA?	
22	MS. HINTZ: Let's take a five-minute break	22	22 A. No, sir.	
23	for me to look at my notes.	23	Q. Did they have any meaningful input in the	
24	MR. FREEMAN: Okay.	24	24 content?	
25	(A recess ensued.)	25	25 A. No, sir.	
	Page 71		Page 7	_
,	Page 71	1	Page 7	٦
1	MR. MAYE: Mr. Taylor, my name is Kieran	1	~	
2	Maye. I don't think I had the pleasure of you in any of	2	• • • • • • • • • • • • • • • • • • •	
3	my classes when you were at OCU, but we were there at the	3		
4	same time, just on different sides of the podium.	4	-	
5	Scott, I don't know if I don't want to	5	, , , , , , , , , , , , , , , , , , , ,	
6	impose, but could you bring up Exhibit 2 again?	6		
7	MR. FREEMAN: Yes.		7 which I don't need Scott to pull up, that was the one	
8	MR. MAYE: You're the master of screen	8	•	
9	sharing.	9	1 3 1	
10		10	-	
11	EXAMINATION	11		
12	BY MR. MAYE:	12		- 1
13	Q. And while he's doing that, Mr. Taylor, I have the	13	13 lawyers be better lawyers. Do you recall that discussion	?
14	privilege in this litigation of representing the chief	14	14 A. I do, yes, sir.	
15	justice and the associate justices of the Oklahoma Supreme	15	Q. And my question is, would this your	
16	Court. And I just have one short series of questions	16	16 participation in this legislative kickoff CLE, would that	
17	regarding that one exhibit when Scott gets it in front of	17	17 be consistent or fit into that same mode, model that you	
18	all of us.	18	18 described in relation to Exhibit 1?	
19	MR. MAYE: Look at that. Do you hire out,	19	19 A. Yes, sir.	
20	Scott?	20	MR. MAYE: I have no further questions.	
21	MR. FREEMAN: I'm expensive.	21	21 Thank you, sir.	
22	MR. MAYE: Yeah, that's probably not an	22	22 THE WITNESS: Thank you, pleasure to meet	
23	efficient hourly rate, is it?	23	23 you.	
24	BY MR. MAYE:	24	MR. MAYE: Good to meet you. Tell your	
٦٢			25 6 .	

Q. Mr. Taylor, my understanding -- and correct me if 25 father I said hello. We're of a different generation.

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 1
                 MS. HINTZ: Nothing from me, Scott.
 2
                 (An off-the-record discussion ensued.)
 3
                 MR. MAYE: I don't need anything. This is
 4 Kieran Maye.
 5
                 MS. HINTZ: Heather Hintz would like the
 6 early transcript, a regular -- like a rush transcript or a
 7 dirty transcript, and a synced transcript to the video,
 8 and a regular transcript.
 9
                 THE COURT REPORTER: There actually is no
10 video.
11
                 (An off-the-record discussion ensued.)
12
                 MS. HINTZ: My order is simply for a dirty
13 copy and then a regular copy in the due course of time.
14
                 MR. FREEMAN: Same for me, same for
15 plaintiff.
16
                 MR. WOOD: No order from the witness.
17
                 He does want to read and sign.
18
                  (Exhibits submitted but not used during the
19
          deposition were marked for identification.)
20
                  (The deposition was concluded at 3:33 p.m.)
21
22
                                CLAYTON CHARLES TAYLOR, JR.
23
24
25
                                                     Page 75
 1 STATE OF ARIZONA
 2 COUNTY OF MARICOPA )
 3
                 BE IT KNOWN the foregoing deposition was
 4 taken by me pursuant to stipulation of counsel; that I was
 5 then and there a Certified Reporter of the State of
 6 Arizona, and by virtue thereof authorized to administer an
 7 oath; that the witness before testifying was duly sworn by
 8 me to testify to the whole truth; notice was provided that
 9 the transcript was available for signature by the
10 deponent; that the questions propounded by counsel and the
11 answers of the witness thereto were taken down by me in
12 shorthand and thereafter transcribed into typewriting
13 under my direction; that the foregoing pages are a full,
14 true, and accurate transcript of all proceedings and
15 testimony had and adduced upon the taking of said
16 deposition, all to the best of my skill and ability.
          I FURTHER CERTIFY that I am in no way related to
17
18 nor employed by any parties hereto nor am I in any way
19
   interested in the outcome hereof.
          DATED at Phoenix, Arizona, this 21st day of
21 February, 2025.
22
23
24
                            Certified Reporter #50503
25
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